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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 147.

ASSOCIATION

LYDIA M. FUSSELL, APPELLANT,

vs.

DANIEL GREGG ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

FILED NOVEMBER 4, 1881.

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1 *Pleas.*

Pleas in the circuit court of the United States for the northern district of Ohio, western division, held at the United States court rooms, in the city of Toledo, in the district aforesaid, before the Honorable Stanley Matthews, Associate Justice of the Supreme Court of the United States, assigned to the sixth circuit, on the first day of Oct., A. D. 1881, being a day of the June term of said court, in the year of our Lord one thousand eight hundred and eighty-one, and in the one hundred and sixth year of the Independence of the United States of America.

AUGUSTUS J. RICKS, *Clerk.*

2 *Bill.*

UNITED STATES OF AMERICA, } ss:
Northern District of Ohio, }

In the Circuit Court, Western Division.

LYDIA M. FUSSELL, Plaintiff,

vs.

DANIEL GREGG, ELEAZER P. KENDRICK, WILLIAM SWISSGOOD, JANE Higgins, James Eaton, Granville Smithson, W. G. Smithson, and Andrew Murdock, Defendants.

Bill in Chancery.

To the honorable the judges of the circuit court of the United States, for the northern district of Ohio. In Chancery sitting.

I. Complaining, your oratrix, Lydia M. Fussell, shows unto your honors that your oratrix, Lydia M. Fussell, is a citizen of the State of Maryland, and that the defendants are all of them citizens of the State of Ohio.

II. That your oratrix, Lydia M. Fussell, is the only surviving grandchild and de-cendant of Archibald Gordon, late a revolutionary soldier and pensioner of the United States, resident of the county of Cecil and State of Maryland.

3 III. That her said grandfather, Archibald Gordon, on the 19th day of July, A. D. 1822, received from the register of the land office of the State of Virginia military land warrant No. 6508, for 200 acres, allowed to him by the State of Virginia in consideration of his services as a private in the Virginia Continental Line during the war.

IV. That on the first day of January, A. D. 1823, her said grandfather, Archibald Gordon, made an entry, No. 12017, in the Virginia military district, in Ohio, of 200 acres of land in his own name upon said military warrant, and caused his said entry to be recorded on that day in the records of entries of lands in the office of the principal surveyor of said military district in the words and figures following, to wit: "January 1, 1823," No. 12017, "Archibald Gordon enters 200 acres of land on a military warrant No. 6508, on the

waters of Rush creek, beginning at the northeast corner of Robert Green's entry No. 10947, thence to his southeast corner, thence to the northeast corner of Aikens' entry No. 10388, thence to the southwest corner of their entry No. 10387, thence to the northeast corner of said entry in the line of Parker's survey No. 9958, thence N. 12 W. for quantity."

V. That her said grandfather, Archibald Gordon, on the 25th day of March, A. D. 1823, procured his said entry to be surveyed by Thomas J. McArther, a deputy surveyor of said military district, and his survey thereof to be recorded in the record of surveys in the office of the principal surveyor of said military district, on the 5th day of November, A. D. 1824, in the words and figures following, to wit:

(No. 12017, 200 acres.)

Surveyed for Archibald Gordon 200 acres of land on military warrant No. 6508, on the waters of Rush creek, beginning at a stake northwest corner to Alexander Parker's survey No. 9958,
4 in the line of Sawyer's survey No. 10239, thence S. 12 E. 246 poles to two beeches in the line of Parker corner to Aikens' survey No. 10387 and 10388; thence with a line of said survey S. 78 W. 134 poles to an ash and beech; thence N. 12 W. 246 poles to a hickory and elm in the line of Sawyer's said survey; thence N. 78 E. 134 poles to the beginning."

"THOS. McARTHER, *D. S.*"

LEVI D. THARP.
METHRAH ROSEBRUG, *C. C.* March 25th, 1823.
WILSON L. THOMPSON, *M'Fr.* November 5th, 1824.

VI. That said entry and survey were so made and recorded in conformity to law, were precise and certain, and appropriated the land on which they were made, and vested in her said grandfather, Archibald Gordon, a good equitable estate to said land in fee simple.

VII. That her said grandfather, Archibald Gordon, died intestate on the —— day of ——, A. D. 18—, seized of the equitable estate in fee simple in said location of land, leaving issue one son, his only child, viz., Archibald Gordon, late of the city of Baltimore, and State of Maryland.

VIII. That the son, said Archibald Gordon, of the city of Baltimore, died intestate on the 13th day of April, A. D. 1830, seized of the equitable estate in fee simple in said location of land, leaving issue two daughters, then infants, his only children, viz, your oratrix, Lydia, and her sister, Sarah Precilla.

IX. That the sister of your oratrix, said Sarah Precilla, intermarried with William H. Kelly, on the —— day of ——, A. D. 18—,
5 and died intestate on the 12th day of May, A. D. 1853, siezed of the equitable estate in one equal undivided moiety of said location of land, leaving her said husband and issue, one daughter, her only child, viz., Mary Elizabeth Kelly.

X. That her said husband, said William H. Kelly, died on the —— day of ——, A. D. 18—, leaving his said daughter, Mary Elizabeth Kelly, surviving him.

XI. That the daughter, Mary Elizabeth Kelly, died on the —— day of ———, A. D. 18—, an infant intestate and without issue, seized of the equitable estate in fee simple, in one equal undivided moiety of said location of land, leaving your oratrix, her aunt, Lydia M. Fussell, her sole heir-at-law.

XII. That your oratrix intermarried with Joseph B. Fussell on the 31st day of October, A. D. 1854, and that her said husband died on the 6th day of December, A. D. 1864, since when your oratrix has remained a widow.

XIII. Your oratrix, Lydia M. Fussell, avers that she is now seized in fee simple of the equitable estate in said location of land, and entitled to the immediate possession thereof, and that the premises are now situate in the county of Logan, in the northern district of Ohio, and within the jurisdiction of this honorable court.

XIV. But your oratrix, Lydia M. Fussell, further shows unto your honors that one Daniel Gregg, on the 4th day of October, 1851, made an entry in the records of the office of said principal surveyor of said military district in the words and figures following, to wit: "No. 16070" "Daniel Gregg, ap'll, enters 130 acres of land on part of a military warrant (exchange), No. 442, on the waters of
6 Scioto river, to include the vacant lands between surveys 9993, 9977, 9994, 9978, and 14530." And on the 20th day of December, 1851, procured 100 acres of his said entry to be so surveyed as to cover the land appropriated by the location entry and survey No. 12017, in the name of your oratrix's said grandfather, Archibald Gordon, and on the second day of November, 1855, procured his said survey to be recorded in the office of the principal surveyor of said military district in the words and figures following, to wit:

(No. 16070, 100 acres.)

Surveyed for Daniel Gregg, ass'ee, 100 acres of land on part of a military warrant (exchange) No. 442 on the waters of Rush creek, beginning at a large red oak and beech corner to Cadwallader Wallace's survey No. 14530, thence with the line thereof S. 12 E. 113 poles to an ash and beech corner to said survey, in the line of survey No. 10387 and 10388; thence with the line thereof N. 78 E. 83 poles to two beeches, easterly corner, to said survey in the line of Alexander Parker's survey No. 9958; thence with the line thereof N. 12 W. 193⅜ poles to a stake, northwest corner, to said survey in the line of survey No. 10239; thence with the line thereof S. 78 W. 83 poles to a stake in a pond, northeast corner, to said survey No. 14,530; thence S. 12 E. 80⅜ poles to the beginning."

"NATH'L MASSEE, *D. S.*" Dec. 20, 1851.

"Examined and recorded Nov. 2nd, 1855.

"E. P. KENDRICK, *S.*"

"JAMES ROSS."
"JERRY LISLE," "*C. C.*"
"JOHN R. GUNEE," *M'Fr.*"

And on the 20th day of November, 1855, obtained from the United States a patent in his own name for the land so surveyed.

7 And your oratrix avers that the entry of said Gregg, his said survey and patent, were all of them made and obtained in violation of the proviso of the 2nd section of the act entitled an act to extend the time for locating Virginia military land warrants and returning surveys thereon to the General Land Office, approved March 1st, 1823, and are all of them void, and none of them ever appropriated any land or vested any title in said Gregg to the land so surveyed and patented to him, as against your oratrix or any of her ancestors or other person under whom she derives title to said location and entry and survey No. 12017, made in the name of Archibald Gordon upon said military warrant No. 6508.

XV. Your oratrix, Lydia M. Fussell, shows unto your honors that at a time unknown to her some person, also to her unknown, without her knowledge or consent, or the knowledge or consent of her ancestors, or other person under whom she derives title to said survey of land No. 12017, wrongfully obtained from the office of the principal surveyor of said military district said military warrant No. 6508 and the original survey of said location and entry of land No. 12017, and has destroyed said warrant and original survey, or has suppressed them and still doth, or the said military warrant and original survey have been lost or misslaid in said office, without the fault of your oratrix or any of her ancestors, or other person under whom she claims title to said location and survey of land No. 12017,

8 so that they cannot now be found or produced.

XVI. Your oratrix, Lydia M. Fussell, avers that one Eleazer P. Kendrick, being the principal surveyor of said military district, and in the possession of the records of the entries and surveys of land in said military district at a time unknown to your oratrix, and without her knowledge or consent, or the knowledge or consent of any person under whom she derives title to said premises, wrongfully wrote in the margin of the record of said entry No. 12017 the word: "Withdrawn," and on and across the plat and record of the survey thereof the words "State line;" that the writing of said words bear no date, but your oratrix avers that said words were so wrote upon said records subsequent to the making of the said entry and survey of said Gregg, and the said Eleazer P. Kendrick, still being such principal surveyor of said military district, now refuses to give your oratrix a duplicate of her said survey No. 12017 with the necessary certificate as such principal surveyor to enable her to obtain from the United States a patent for her said survey of land No. 12017 so made upon said military warrant No. 6508.

XVII. Your oratrix avers that said premises are adapted to grazing and the raising of grain, very productive, &c., and that the said William Swissgood, Jane Higgins, James Eaton, Granville Smithson, W. G. Smithson, and Andrew Murdock, have wrongfully kept your oratrix out of the possession of said premises for several years, claiming title to said premises under the said Daniel Gregg,

9 his said location and patent, and to the exclusion of your oratrix, have received the rents and profits of said

premises, amounting to a large sum, and refuse to account to your oratrix for said rents and profits, or any part thereof, all of which acts of said defendants are contrary to equity and good conscience, and tend to hinder and obstruct your oratrix in perfecting her title to said premises under the location of her said grandfather, Archibald Gordon, and the survey No. 12017 in his name upon said military warrant No. 6508, and to do to your oratix other wrongs and injuries to her rights in the premises.

In consideration whereof, and for as much as your oratrix can only have adequate relief in a court of equity, where such matters are properly cognizable and relievable, your oratrix prays that the said Daniel Gregg, Eleazer P. Kendrick, William Swissgood, Jane Higgins, James Eaton, Granville Smithson, W. G. Smithson, and Andrew Murdock may be made defendants to this your oratrix original bill; that on the final hearing, the location, entry, and survey No. 12017, in the name of her ancestor, Archibald Gordon, founded on said military warrant No. 6508, be established and affirmed and the validity thereof forever perpetuated; that the location of said Daniel Gregg, his entry and survey No. 16070, and patent, be adjudged to have been made and issued in violation of the proviso of said act of Congress and void. That the said words "Withdrawn" and "State line" so written upon said records, location, entry, and survey No. 12017 be adjudged to have been so written without authority, and that the evidence of said military warrant No. 6508, and original survey of said entry No. 12017, be forever perpetuated; that your oratrix may have an order for the delivery of the possession of said premises to her, and that an account may be taken of the rents and profits of said premises during the time they have been occupied by the said William Swissgood, Jane Higgins, James Eaton, Granville Smithson, W. G. Smithson, and Andrew Murdock to the exclusion of your oratrix, and that such other relief may be granted to your oratrix, as in equity she may [be] entitled to, and your oratrix prays your honors to grant unto your oratrix the writ of subpœna issuing out of and under the seal of this honorable court, directed to said defendants, commanding them by a certain day and under a certain penality to be and appear before this honorable court, then and there to answer the premises, and to stand and abide such order and decree as may be made against them, and your oratrix will ever pray, &c.

JEREMIAH HALL,
Solicitor for Complainant.

STATE OF MARYLAND, *City of Baltimore*, } *to wit:*

The plaintiff, Lydia M. Fussell, being duly sworn, says that the facts stated in her said petition are true, as she believes.

LYDIA M. FUSSELL.

Sworn to before me by said Lydia M. Fussell, and subscribed by her in my presence, this 1st day of Sept., A. D. 1879.

[SEAL.] G. E. SANGSTON,
Notary Public.

Filed Nov. 20th, 1879.

11 And afterwards, to wit, on the 2nd day of December, A. D. 1879, the following subpœna was filed in this case in this court, being in the words and figures, to wit:

Subpœna.

THE UNITED STATES OF AMERICA, *Northern District of Ohio, Western Division,* } *ss:*

The President of the United States of America to the marshal of the northern district of Ohio, Greeting:

You are hereby commanded to summon Daniel Gregg, Eleazer P. Kendrick, William Swissgood, Jane Higgins, James Eaton, Granville Smithson, W. G. Smithson, Andrew Murdock, if they be found in your district, to be and appear in the circuit court of the United States in and for the division and district aforesaid, at Toledo, on the first Monday in February next, to answer a certain bill in chancery filed and exhibited in said court against them by Lydia M. Fussell. Hereof they are not to fail, under the penalty of the law, thence ensuing, and have you then and there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the United States, this 29th day of Nov., A. D. 1879, and in the 104th year of the Independence of the United States of America.

[SEAL.] A. J. RICKS, *Clerk,*
By O. T. CASE, *Deputy Clerk.*

12 *Memorandum.*

The said defendants are required to enter their appearance in this suit, in the clerk's office of said court in Toledo, on or before the first Monday of January, 1880, otherwise the bill may be taken *pro confesso.*

A. J. RICKS, *Clerk,*
By O. T. CASE, *Deputy Clerk.*

NORTHERN DISTRICT OF OHIO, *ss:*

On the 25th of November, 1879, I delivered a true copy of this writ, duly certified, to the within named W. G. Smithson, and left a true and duly certified copy of this writ at the usual place of abode of William Swisswood in the hands of his wife Emily; I also, same day, left a true copy of this writ, duly certified, at the usual place of abode of the within named Andrew Murdock in hands of his wife Nancy, all at Bokes Creek township, Logan county, Ohio, each of the above named, William Swisswood, Andrew Murdock, being absent from home, could not be found.

I also, same day, delivered a true and duly certified copy of this writ to the within named James Eaton, at Ridgeway, Harden county, Ohio. The within named Daniel Gregg, Eleazer P. Kendrick, Jane Higgins, and Granville Smithson not found, nor have they a residence in this district.

N. B. PRENTICE, *U. S. Marshal,*
By JOHN ODELL, *Deputy.*

Service	$8 00
Copies (6)	3 00
Travel, 113 miles	7 78
	$17 78

Endorsed: Returnable Jan. 5th, 1880. Rule day for appearance Jan. 5th, 1880. Rule day for answer Feb. 2nd, 1880. Returned and filed December 2nd, 1879.

13 And afterwards, to wit, on the 2nd day of June, A. D. 1880, the following subpœna was filed in this case in this court, being in the words and figures following, to wit:

Subpœna.

THE UNITED STATES OF AMERICA, } ss:
Northern District of Ohio, Western Division. }

The President of the United States of America to the marshal of the southern district of Ohio, Greeting:

You are hereby commanded to summon Daniel Gregg and Eleazer P. Kendrick, if they are to be found in your district, to be and appear in the circuit court of the United States in and for the division and district aforesaid, at Toledo, on the first Monday in July next, to answer a certain bill in chancery filed and exhibited in said court against them by Lydia M. Fussell. Hereof they are not to fail under the penalty of the law thence ensuing, and have you then and there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the United States, this 15th day of May, A. D. 1880, and in the 104th year of the Independence of the United States of America.

A. J. RICKS, *Clerk*,
By CLARANCE BROWN, *Deputy Clerk.*

Memorandum.

The said defendants are required to enter their appearance in this suit in the clerk's office of said court, in Toledo, on or before the first Monday of June, 1880, otherwise the said bill may be taken *pro confesso.*

CLARANCE BROWN, *Deputy Clerk.*

14 Samuel H. Ruggles has acknowledged himself security for all costs for which the complainant may be liable in this suit.

Received this writ at Cincinnati, Ohio, May 18th, 1880, and served the same in Chillicothe, Ohio, May 31st, 1880, as follows: By delivery of true copy hereof, at 1.40 p. m., to Eleazer P. Kendrick, personally; by true copy hereof, personally, to Daniel Gregg, at 1.05 p. m.

J. C. ULLY, *U. S. Marshal, S. D. O.*,
By WM. M. TUNE, *Deputy.*

2 services	$4 00
2 copies	1 00
103 miles	6 18
	$11 18

Endorsed: Returnable June 7th, 1880; rule day for appearance, June 7th, 1880; rule day for answer, July 5th, 1880; returned and filed, June 2nd, 1880.

And afterwards, to wit, on the 2nd day of January, A. D. 1880, being a day of the December term of said court, the following answer was filed in this cause in this court, which is in the words and figures, to wit:

Answer in Chancery.

In the Circuit Court Western Division, Northern District of Ohio.

LYDIA M. FUSSELL, Plaintiff,

vs.

DANIEL GREGG, ELEAZER P. KENDRICK, WILLIAM SWISSGOOD, JANE Higgins, James Eaton, Granville Smithson, W. G. Smithson, and Andrew Murdock, Defendants.

Answer in Chancery.

15 To the honorable the judge of the circuit court of the United States for the northern district of Ohio, in chancery sitting:

Answering, these respondents, William Swissgood, Jane Higgins, James Eaton, Granville Smithson, and G. W. Smithson, who is the same person, and Andrew Murdock, to the bill filed herein against them, shows to your honors the following matters of defense:

I. They say they have no knowledge or means of knowing the truth of the allegations in the bill contained; that the plaintiff is the grandchild and descendant of the said Archibald Gordon, senior, or that she is the child and descendant of the said Archibald Gordon, junior, or that she was married as stated, or that her alleged husband is deceased, or that she resides in the State of Maryland, or that her said father or grandfather died intestate or seized of an equitable estate in said lands, or that she hath an equitable estate therein, or that the said entry and survey No. 12017 were valid and subsisting at the date of said entry and survey No. 16070, or of the allegations contained in paragraphs No. XIV, XV, XVI, and XVII of the bill, and they deny each and all of them, except the averment of entry, survey, patent, and possession.

II. For a further defense they say that the complainant's
16 said pretended cause of action, if it ever accrued to her at all, did not accrue within twenty-one years next preceding the commencement of this action, and hence that the same is barred by lapse of time.

III. For a further defense they say that the said Archibald Gordor, senior, as they are informed and believe, did, in his lifetime,

sell, assign, transfer, and deliver the said entry and survey No. 12017, by written assignment, to the said Archibald Gordon, junior, who afterwards, by his deed duly executed prior to his death, sold and conveyed the same, and the land covered thereby, to one Frances E. Hart.

IV. These respondents further say that the said Archibald Gordon, senior, as they are informed and so charge, died prior to the death of said Archibald Gordon, junior, and that said Archibald Gordon, junior, afterwards, by his deed duly executed, sold and conveyed the said entry and survey No. 12017, and the lands conveyed thereby, to one Frances E. Hart, and did not own the same, or any interest therein, at his death.

V. These respondents further say that the said Archibald Gordon, junior, in his lifetime, by his deed duly executed, acknowledged, and delivered, sold and conveyed the said entry and survey No. 12017, and the lands covered thereby, to one Frances E. Hart, and the plaintiff is estopped by the said deed from denying the validity of said conveyance or asserting any title or interest in the said lands
17 against the same.

WEST, WALKER AND WEST,
Solicitors for Respondents.

THE STATE OF OHIO, }
Logan County, } *ss:*

Granville Smithson, being first duly sworn, says that he is one of the respondents, and that he believes the statements of the foregoing answer to be true.

GRANVILLE SMITHSON.

Sworn to and subscribed before me, and in my presence, by said Granville Smithson, this 31st day of December, 1879.

MILTON STERN,
Notary Public, Logan County, O.

Endorsed: Filed January 2nd, 1880.

And afterwards, to wit, on the 22d day of March, 1880, being a day of the January term of said court, the following replication was filed in this cause in this court, being in the words and figures, to wit:

Replication.

THE UNITED STATES OF AMERICA, }
Northern District of Ohio, } *ss:*

In the Circuit Court, Western Division.

LYDIA M. FUSSELL, Plaintiff, }
vs. } Replication in Chancery.
DANIEL GREGG *et al.*, Defendants. }

18 This repliant, Lydia M. Fussell, for her replication to the answer of said respondents, William Swissgood, Jane Higgins, James Easton, Granville Smithson, and Andrew Murdock, says:

That as to the first defense stated in said answer she will prove her said bill to be true, &c.

That as to the second defense in said answer stated, she says:

1st That is between herself and said respondents the legal title to the premises in her said bill described as entry and survey No. 12017 is in the United States.

2d That neither she nor those under whom she derives title to said premises had any knowledge or information whatever of the fraudulent withdrawal of said entry and survey No. 12017, or of the fraudulent making of said survey No. 16070, upon the land appropriated by said entry and survey No. 12017, or of the issuing of the patent to said Gregg for that part of said entry and survey No. 12017 covered by said survey No. 16070, until within four years next before the filing of her said bill, and the commencement of her action herein.

3rd. That her said cause of action did accrue to her within twenty-one years next before the filing of her said bill and the commencement of her said action.

That as to the third defense stated in said answer she denies
19 each and every allegation thereof, and avers that if her father, said Archibald Gordon, junior, ever made a deed of said entry and survey No. 12017 to Frances E. Hart, or any other person, it was without consideration, and made at a time when her said father had no title to said entry and survey or seizu-e thereof, was without covenants of warranty or other covenants of assurance of title and made previous to the death of her grandfather, said Archibald Gordon, senior, who died seized of said entry and survey; that no possession was ever taken of said entry and survey under said pretended deed by said Francis E. Hart, or any other person.

That as to the fourth defense stated in said answer she denies the execution of the deed alleged in said defense, and avers that said Archibald Gordon, junior, her father, died seized of said entry and survey, and the lands covered thereby.

That as to the 5th defense stated in said answer she denies each and every allegation therein stated, and avers that if her father, said Archibald Gordon, junior, ever made a deed of said entry and survey, or the land covered thereby, to Frances E. Hart, or any other person, it was made before the death of her grandfather, said Archibald Gordon, senior, who died seized of said entry and survey, and the land covered thereby; that said deed, if made, was without valid consideration and without covenants of warranty or other assurance of title; that said Francis E. Hart or any other person never took or received possession of said entry and survey, under said pre-
20 tended deed, &c., and she denies that she is estopped to assert title to said entry and survey by reason of said pretended deed, &c.

JEREMIAH HALL,
Solicitor for Complainant.

STATE OF MARYLAND, *City of Baltimore*, } *to wit:*

The plaintiff, Lydia M. Fussell, being duly sworn, says that the facts stated in her said replication are true as she believes.

LYDIA M. FUSSELL.

Sworn to before —— by said Lydia M. Fussell, and subscribed by her in my presence, this 17th day of March, 1880.

G. E. SANGSTON,
Notary Public.

Endorsed: Filed M'ch 22nd, 1880.

Precipe.

UNITED STATES OF AMERICA,
Northern District of Ohio, Western Division:

LYDIA M. FUSSELL
vs.
DANIEL CREGG *et al.* } No. 143. Circuit Court Precipe.

Issue subpœna to the marshall of the southern district of Ohio for Daniel Gregg and Eliezer P. Kendrick, of the parties defendant, who will be found at the city of Chillicothe, Ross county, Ohio.

JEREMIAH HALL,
Att'y for Plaintiff.

Clerk of circuit court U. S. Dated May 12th, 1880.
Filed May 14th, 1880.

21 *Precipe.*

THE UNITED STATES OF AMERICA,
Northern District of Ohio, Western Division:

LYDIA M. FUSSELL
vs.
DANIEL GREGG *et. al.*, Defendants. } No. 143. Circuit Court Precipe.

Issue subpœna to the marshal of northern district of Ohio for Jane Higgins, who will be found on the land in Logan county, Ohio, near Ridgway.

JEREMIAH HALL,
Att'y for Plaintiff.

Clerk of circuit court U. S. Dated May 12th, 1880.
Filed May 14th, 1880.

Alias Subpœna.

UNITED STATES OF AMERICA, } ss:
Northern District of Ohio, Western Division, }

The President of the United States of America to the marshal of the northern district of Ohio, Greeting:

You are hereby commanded to summon Daniel Gregg, Eleazer P. Kendrick, Jane Higgins, and Granville Smithson, if they are to be found in your district, to be and appear in the circuit court of the United States in and for the division and district aforesaid,
22 at Toledo, on the first Monday in July next, to answer a certain bill in chancery filed and exhibited in said court against

them by Lydia M. Fussell. Hereof they are not to fail under the penalty of the law thence ensuing, and have you then and there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the United States, this 10th day of May, A. D. 1880, and in the 104th year of the Independence of the United States of America.

[SEAL.] A. J. RICKS, *Clerk*,
By CLARANCE BROWN, *Deputy Clerk*.

Memorandum.

The said defendants are required to enter their appearance in this suit, in the clerk's office of said court, in Toledo, on or before the first Monday of June, 1880; otherwise the said bill may be taken *pro confesso*.

CLARANCE BROWN, *Deputy Clerk*.

S. H. Ruggles, of Circleville, Ohio, has acknowledged himself security for all costs for which the complainant may be liable in this suit.

NORTHERN DISTRICT OF OHIO, *ss*:

This writ returned to the court not served. I made demand for my fees for said service of Jeremiah Hall, complainant's solicitor, and same not being furnished, I did not serve the writ.

W. F. GOODSPEED,
Copy, 50. *U. S. Marshal*.

23 Endorsed: Returnable, June 7th, 1880; rule day for appearance, June 7th, 1880; rule day for answer, July 5th, 1880; returned and filed, June 7th, 1880.

And afterwards, to wit, on the 28th day of August, A. D. 1880, being a day of the April term of said court, the following plea was filed in this cause in this court, being in the words and figures, to wit:

Plea.

Northern District of Ohio, Western Division, in Circuit Court.

LYDIA M. FUSSELL, Plaintiff, *vs.* DANIEL GREGG *et al.*

Plea.

The respondent, Daniel Gregg, saving and reserving to himself all and all manner — exceptions for errors, imperfections, and insufficiencies of the complainant's said bill, for pleas thereto, or so much thereof as he is advised is necessary for him to answer unto, says:

1st. He is wholly ignorant of the alledged heirship of the plaintiff, or that said Archibald Gordon died intestate, leaving a son, as alledged, who was the father of the plaintiff, or that the plaintiff was intermarried as alledged, or that the plaintiff had a sister, now deceased, or that she died as alledged leaving

issue, or that her alledged daughter died without issue,
24 or of the several matters alledged in clause No. XV of complainants' bill, or of the several matters alledged in paragraph No. XVI of said bill, and he denies each and every of the said averments and allegations of the said bill above referred to or mentioned, and he especially denies that the said plaintiff's alledged father had or held any interest, title, or estate in the said waraant, survey, or lands at the time of his alledged decease, either by inheritence or otherwise, or that said Archibald Gordon, the Revolutionary soldier had, at [the] time of his decease, any title, interest, or estate in the said warrant or survey 12017, or in the lands covered by the same.

2d. On the contrary, this respondent denies that whatever interest, title, or estate the said Revolutionary soldier ever had in the said warrant and survey of lands, he sold, assigned, conveyed away, and parted with in his lifetime.

3d. This respondent further avers that on the death of said revolutionary soldier, he having personally parted with all title as above stated, neither the said survey, warrant, or lands descended from him to any other.

4th. This respondent further avers that the said complainants' pretended cause of action did not accrue to her within twenty-one years next preceding the commencement of this action.

5th. This respondent avers that the matters alledged in the
25 XIV paragraph of the plaintiff's bill are matters of law depending upon the facts to be established, and he denies any supposed fact therein alledged.

6th. This respondent further says that he is ignorant of the matters alledged in the VI paragraph of the plaintiff's bill, the same being matters of law depending upon the facts to be established, and he denies the same, and he denies all title, interest, or possession and estate in the plaintiff, as alledged.

He, therefore, prays to [be] hence dismissed with costs.

WEST, WALTER & WEST,
Solicitor for Daniel Gregg.

STATE OF OHIO, } ss:
Ross County, }

Daniel Gregg, defendant above named, being sworn, says he believes the statements of the above plea to be true.

DANIEL GREGG.

Sworn to and subscribed before me and in my presence by said Daniel Gregg, this 19th day of August, 1880.

W. E. EVANS,
Notary Public for Ross County, Ohio.

Endorsed: Filed Aug. 23d, 1880.

And afterwards, to wit, on the 2d day of October, being a day of the adjourned June term, 1880, of said court, this cause was continued until the next term of this court.

26 And afterwards, to wit, on the 6th day of December, A. D. 1880, being a day of the December term of said court, the following supplemental bill was filed in this cause in this court, to wit:

Supplemental Bill.

UNITED STATES OF AMERICA,
Northern District of Ohio, } *ss:*

In the Circuit Court, Western Division.

LYDIA M. FUSSELL, Plaintiff, *vs.* DANIEL GREGG *et al.*, Defendants

Supplemental Bill in Chancery.

To the honorable the judges of the circuit court of the United States for the northern district of Ohio, in chancery sitting:

I. Complaining, your oratrix, said Lydia M. Fussell, shows unto your honors that your oratorix is still a citizen of the State of Maryland, and that Francis Higgins, John W. Higgins, Angeline Higgins, Matilda Higgins, and Emily Swissgood, against whom this supplemental bill is exhibited, are all of them citizens of said State of Ohio.

II. That your oratrix, since filing her original bill herein, has discovered that Jane Higgins, named in her said original bill as party defendant, had, just previous to the filing thereof,
27 departed this life intestate, leaving issue two sons and two daughters, to wit, said Francis Higgins, John W. Higgins, Angelina Higgins, and Matilda Higgins, her only children and sole heirs at law, and that your oratrix had also, since the filing of her said original bill, discovered that said Emily Swissgood was the wife of William Swissgood, also named in her said original bill as a party dfendant, and that said Francis Higgins, John W. Higgins, Angelina Higgins, Matilda Higgins, and Emily Swissgood were, at the time of the filing of her said original bill, in possession of said survey and location of land No. 12017, or some part thereof, described in her said original bill, and were claiming title thereto under the deed of said Daniel Gregg, the principal defendant in her said original bill, and his survey No. 16070 and patent therefor described in her said original bill.

III. Your oratrix, for the purpose of this her supplemental bill, as against said Francis Higgins, John W. Higgins, Angelina Higgins, Matilda Higgins, and Emily Swissgood, adopts the statements of the 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, and 16th paragraphs of her original bill filed herein, and makes each of said paragraphs a part of this her supplemental bill, the same as if they were herein again repeated to include the words and figures thereof.

IV. Your oratrix avers that said premises are adapted to grazing and the raising of grain, &c., and the use and occupancy
28 thereof valuable, and that the said Francis Higgins, John W. Higgins, Angelina Higgins, Matilda Higgins, and Emily

Swissgood have wrongully kept your oratrix out of the possession of said premises for several years, claiming title thereto under said Gregg, his location, survey, and patent to the exclusion of your oratrix, and during which period they have received the rents and profits thereof, amounting to a large sum, and refuse to account to your oratrix for said rents, &c., or any part thereof, all of which acts of said Francis Higgins, John W. Higgins, Angelina Higgins, Matilda Higgins, and Emily Swissgood are contrary to equity and good conscience, and tend to hinder and obstruct your oratrix in perfecting her title to said premises under the location of her said grandfather, Archibald Gordon, No. 12017, founded on his said military warrant No. 6508, and to do your oratrix other wrongs and injury to her rights in said premises.

In consideration whereof, and for as much as your oratrix can only obtain adequate relief in a court of equity, where such matters are properly recognized and relieved, wherefore your oratrix prays that the said Francis Higgins, John W. Higgins, Angelina Higgins, Matilda Higgins, and Emily Swissgood may be made defendants to this your oratrix's supplemental bill, and that on the final hearing of her original bill, and this her supplemental bill, the location of her said grandfather, Archibald Gordon, his entry and survey No. 12017, founded on said military warrant No. 6508, be established and confirmed as valid and subsisting, and the validity thereof forever perpetuated, and that the said location, entry, and survey of said Gregg No. 16070, and his patent thereon, be adjudged to have been made and issued in violation of the proviso of said act of Congress, and void; that the said words "Withdrawn" and "State line" so written upon said recorded location, entry, and survey, No. 12017, be adjudged to have been so written without authority and decreed to be cancelled, and the evidence of said military warrant No. 6508 and originial survey of the location No. 12017 be forever perpetuated and established, and that your oratrix may have an order for the delivery of the possession of said premises to her, and that an account may be taken of the rents and profits of said premises during the time they have been occupied by said Francis Higgins, John W. Higgins, Angelina Higgins, Matilda Higgins, and Emily Swissgood to the exclusion of your oratrix, and that such other relief may be granted to your oratrix as in equity she may be entitled to; and your oratrix prays your honors to grant unto your oratrix the writ of subpœna issuing out of and under the seal of this honorable court, directed to the said Francis Higgins, John W. Higgins, Angelina Higgins, Matilda Higgins, and Emily Swissgood, commanding them by a certain day and under a certain penalty to be and appear before this honorable court, then and there to answer the premises, and to stand and abide such order and decree as may be made against them; and your oratrix will ever pray, &c.

JER-MIAH HALL,
Solicitor for Complainant.

THE STATE OF MARYLAND, } *to wit:*
City of Baltimore, }

The plaintiff, Lydia M. Fussell, being first duly sworn, says that the facts stated in her said supplemental bill are true as she believes.

LYDIA M. FUSSELL.

Sworn to before me, by said Lydia M. Fussell, and subscribed by her in my presence, this 26th day of November, A. D., 1880.

[SEAL.] FELIX R. SULLIVAN,
Notary Public.

Filed Dec. 6th, 1880.

And afterwards, to wit, on the 15th day of December, 1880, there was filed in this cause in this court the following subpœna, to wit:

Subpœna.

UNITED STATES OF AMERICA, } *ss:*
Northern District of Ohio, Western Division, }

The President of the United States of America to the marshal of the northern district of Ohio, Greeting:

You are hereby commanded to summons Francis Higgins, John W. Higgins, Angelina Higgins, Matilda Higgins, and Emily
31 Swissgood, if they are to be found in your district, to be and appear in the circuit court of the United States in and for the division and district aforesaid, at Toledo, on the first Monday in February next, to answer a certain bill in chancery, filed and exhibited in said court against them by Lydia M. Fussell. Hereof they are not to fail under the penalty of the law thence ensuing, and have you then and there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the United States, this 6th day of December, A. D. 1880, and in the 105th year of the Independence of the United States of America.

[SEAL.] A. J. RICKS, *Clerk,*
By CLARENCE BROWN,
Deputy Clerk.

Memorandum.

The said defendants are required to enter their appearance in this suit in the clerk's office of said court, in Toledo, on or before the first Monday of January, 1881, otherwise the said bill may be taken *pro confesso.*

CLARANCE BROWN,
Deputy Clerk.

Sam'l H. Ruggles has acknowledged himself security for all costs for which the complainant may be liable in this suit.

NORTHERN DISTRICT OF OHIO, *ss:*

On the 9th day of Dec., 1880, at Ridgway, Logan county, Ohio, I made due service of this writ by delivering to each of the within

named Emily Swissgood and Francis Higgins a true and duly
32 certified copy of this writ, and at same time and place I made due service of this writ on the within-named John W. Higgins by leaving a true and duly certified copy thereof at his usual place of abode, in the hands of his wife, Martha Higgins, he being absent from home and could not be found, and at same time and place I made due service of this writ on the within-named Angelina Higgins by leaving a true and duly certified copy thereof at her usual place of abode in the hands of her brother, Francis Higgins, she being absent from home and could not be found. The within-named Matilda Higgins not found within this district, neither has she a residence therein.

W. F. GOODSPEED,
U. S. Marshal,
By HIRAM F. COLLIN, *Deputy.*

Service	8 00
Copies (5)	2 50
Travel, 137 m.	10 22
	$20 72

Endorsed: Returnable January 3rd, 1881. Rule day for appearance, Jan. 3rd, 1881. Rule day for answer, February 7th, 1881. Returned and filed December 15th, 1881.

And afterwards, to wit, on the 23d day of December, being a day of the December term of said court, A. D. 1880, this cause was continued until next term of this court.

33 And afterwards, to wit, on the 30th day of Dec., A. D. 1880, being a day of the December term of this court, the following plea was filed in this cause in this court, to wit:

Plea of Higgins.

United [States] Circuit Court, Northern District of Ohio, Western Division.

LYDIA M. FUSSELL *vs.* DANIEL GREGG *et al.*

The defendants, Francis Higgins, John W. Higgins, and Angelica Higgins, for answer to plaintiff's complaint, adopt and affirm all and singular the matters and facts allegded and set forth in the answers and pleas of their co-defendants heretofore filed in the case, as fully as if the same were herein specifically set forth at large.

WEST, WALKER AND WEST,
Solicitors.

THE STATE OF OHIO, }
Logan County, } *ss:*

Francis Higgins, one of the above named defendants, being sworn, says he believes the statements of the above plea to be true.

F. M. HIGGINS.

Sworn to and subscribed before me and in my presence by the said Francis Higgins, this 28th day of December, 1880.

T. S. BROWN,
Notary Public.

Filed Dec. 30th, 1880.

34 And afterwards, to wit, on the 15th day of April, A. D. 1881, there was filed in this cause in this court the answer of Emily Swissgood, which is in the words and figures, to wit:

Answer of Emily Swissgood.

In the Circuit Court United States, —— of Ohio, Northern Division.

LYDIA M. FUSSELL, Plaintiff, *vs.* DANIEL GREGG *et al.*

The respondent, Emily Swissgood, says she is a married woman, and has been for many years, and that her husband is William Swissgood.

For plea to said complainant's bill of complaint this respondent adopts and affirms all and singular the averments and allegations of the plea of her co-defendant, William Swissgood, and all the denials therein contained.

For a further plea she say[s] that the complainant's said pretended cause of action did not accrue to her against this respondent within twenty-one years next prior to the time when this her said action was commenced against this respondent.

For a further plea this respondent says that she and those under whom she claims title have been in the open, actual, notorious, exclusive, and adverse possession of the said premises, claiming title thereto for more than twenty-one years continuously next preceding the commencement of said action against her.

35 She therefore prays to be dismissed hence with her costs.

WEST, WALKER AND WEST,
Att'ys for Emily Swissgood.

THE STATE OF OHIO, }
Logan County, } *ss:*

Emily Swissgood, the respondent, being duly sworn, says the statements of the above pleas are true, as she verily believes.

EMILY SWISSGOOD.

Sworn to and subscribed before me, and in my presence, by the said Emily Swissgood, this 13th day of April, 1881.

WILLIAM CALLAHAN, *J. P.*

Filed April 15th, 1881.

And afterwards, to wit, on the 13th day of June, 1881, the following replication in this cause was filed in this court, being as follows, to wit:

Replication.

UNITED STATES OF AMERICA,
Northern District of Ohio, Western Division, } *ss:*

In the Circuit Court.

LYDIA M. FUSSELL, Plaintiff, *vs.* DANIEL GREGG *et al.*, Defendants.

Replication.

36 This repliant, said Lydia M. Fussell, replying to the several answers of said defendants, Daniel Gregg, Francis Higgins, John W. Higgins, Angelina Higgins, and Emily Swissgood, states—

1st. That she denies each and every allegation of fact stated in said several answers.

2nd. That the legal title to the premises in her said bill described, as between herself and said defendants, is in the United States.

3rd. That she had no knowledge of the fraud of said Daniel Gregg, in so surveying 100 acres of his said entry No. 16070, as to cover the land before entered and surveyed for her said grandfather, or of the issuing of his said patent founded in his said survey, until within six years next before the filing of her said bill and the commencement of her said action.

4th. That at the time said survey No. 16070 was made and said patent was issued she was a married woman, and was then the wife of Joseph B. Fussell, and so continued to be until his death on the 6th day of December, 1865, when he died.

5th. That she denies that her said cause of action is stale, and avers that her said cause of action did accrue to her within twenty-one years next before the filing of her said bill and the commencement of her said action herein, &c.

JEREMIAH HALL,
Solicitor for Plaintiff.

37 STATE OF MARYLAND,
City of Baltimore, } *to wit:*

Lydia M. Fussell, being sworn, says the facts stated in her foregoing reply are true, as she believes.

LYDIA M. FUSSELL.

Sworn to before me by said Lydia M. Fussell, and subscribed by her in my presence, this 11th day of June, 1881.

[SEAL.] FELIX R. SULLIVAN,
Notary Public.

Filed June 13, 1881.

Deposition on behalf of Plaintiffs.

UNITED STATES OF AMERICA, *Northern District of Ohio.*

In the Circuit Court Western Division.

LYDIA M. FUSSELL, Plaintiff,
vs.
DANIEL GREGG *et al.*, Defendants. } Bill in Chancery. Notice.

Depositions in this action will be taken by the plaintiff at the office of Eleazer P. Kendrick, surveyor of the Virginia military district at Chillicothe, Ross county, Ohio, on the 10th day of February, A. D. 1881, between 9 o'clock a. m. and 9 o'clock p. m., and
38 the examination will be adjourned from day to day thereafter. Dated Jan. 28th, 1881.

JEREMIAH HALL,
Solicitor for Plaintiff.

Service of the above notice is acknowledged, this 28th day of January, 1881.

WEST, WALKER & WEST,
Att'ys for Defendants.

Endorsed: Received this writ by U. S. mail Feb. 1st, A. D. 1881, and on the 2nd day of Feb., A. D. 1881, I served the within named Daniel Gregg and E. P. Kendrick personally by handing to each of them a certified copy hereof. My fee service, 45; copy, 32; mil., 48; ret. D., J. & P., 36—$1.61. Wm. L. Tulleys, sheriff. By Wm. D. Mackey, deputy.

Deposition of a witness taken in an action pending in the circuit court of the United States of America, western division of the northern district of Ohio, wherein Lydia M. Fussell is plaintiff and Daniel Gregg *et al.* are defendants, and for said plaintiff at the time and place hereinafter mentioned.

Jeremiah Hail, solicitor for the plaintiff, being present.

ELEAZER P. KENDRICK, of the county of Ross, of lawful age, being first duly sworn by me, as hereinafter certified, deposes as follows:

39 1 Q. State your name, age, occupation, and place of residence.

A. My name is Eleazer P. Kendrick; my age is ninety y'rs on my last birthday; my occupation is principal surveyor of the Virginia military — in Ohio; place of residence, Chillicothe, Ross county, Ohio, where I keep the office of surveyor of said district.

2nd Q. State about what time you became such surveyor of said district, and who has been in possession of the records of locations of land in said district, and the papers, &c., pertaining to said office since your qualification as such surveyor.

A. I became principal surveyor of said district about the year A. D. 1845, and I have been entitled to the possession of all the papers and records pertaining to said office ever since, and I have

been in the actual possession of all the records of said office since said date.

3rd Q. If there are locations of records in said office in the name of Archibald Gordon and Daniel Gregg respectively, and in which the location of the land by Gregg in any manner conflicts with the location of the land by said Gordon, or covers the land located by him, or any part of it, state what are the numbers of the respective locations, what county situate in, the quantity described in the respective locations, and the order of time in which they were made, etc.

A. There is a location in the name of Archibald Gordon, numbered entry and survey 12017 of two hundred acres made on military warrant No. 6508. There is also an entry and survey in the name of Daniel Gregg, numbered 16070, for one hundred acres. The entry is for one hundred and thirty acres, and the survey for one
40 hundred; these locations are situate in Logan county, Ohio, on the waters of Rush creek. The entry of said Gordon was made on the 1st day of January, A. D. 1823, and was surveyed on the 29th day of March, 1823, by Thomas J. McAuther, deputy surveyor of said district, and recorded November 6th, A. D. 1824. The entry of said Gregg was made on the 4th day of October, A. D. 1851, and one hundred acres of the entry surveyed on the 20th of December, A. D. 1851, by Nathaniel Massie, deputy surveyor of said district, and recorded November 2d, A. D. 1855. This survey of one hundred acres in the name of said Gregg covers the same land, calling for the same corners, as the survey above referred to in the name of said Gordon and appropriated by said Gordon's location.

4th Q. State, if you can, how it occurred that Gregg made or surveyed the one hundred acres of his said entry so as to cover the land appropriated by said Gordon's location.

A. The word "Withdrawn" has been written on the margin of the entry of said Gordon upon the record of entries in said office; the same word had been written upon and across the plat of the record of said Gordon's survey in said office. The words "State line" had also been written across and upon said plat, etc., of the location of said Gordon; the words so written upon said margin, and said several records of the location of said Gordon, indicated that said location had been withdrawn or abandoned, and also that the location had been made upon a military warrant issued for services in the
41 State line; the word "Withdrawn" was so written with ink, and the words "State line" were so written with a lead pencil; I am not confident that I wrote the word "Withdrawn" on the record of the location, but, if I did, it will appear to have been so written in my handwriting. If I did write said word "Withdrawn" upon said record it was from information derived from an abstract of military warrants that I found in the office in the handwriting of Mr. Latham, my predecessor in office; that said military warrant No. 6508, upon which Gordon's location was founded, was a State line warrant.

5th Q. What knowledge had said Gordon, or any one claiming his location, of the writing of said words "Withdrawn" and "State line" upon said records?

A. I can't say they had any knowledge of it.

6th Q. If any of your predecessors in office retained the warrants and original surveys or entries in any locations of lands in said district, made for parties other than themselves, you will state who of them did so, and what note, if any, was usually made upon the record in such cases?

A. When Mr. Allen Latham resigned the office of district surveyor he retained a large number of surveys and warrants in locations of records in said office, for the reason that he had a lien upon them for office fees. No note was made upon the record in these cases. In all cases where these papers were not in the office, and no note of their having been delivered to any one was made upon the record, it was my understanding that the papers in such
42 locations were in the hands of Mr. Allen Latham. Upon the record of Gordon's location no note was made as to whom the papers in said location had been delivered; nor did I ever see either the original military warrant No. 6508 nor the original survey in the location of said warrant.

And further deponent saith not.

E. P. KENDRICK.

STATE OF OHIO, *Ross County*, } *ss:*

I, J. Clifford Douglass, a notary public of the State of Ohio in and for the county of Ross, do hereby certify that the above-named Eleazer P. Kendrick was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the foregoing deposition, by him subscribed to, was reduced to writing by me, and written and by said witness subscribed in my presence, and was taken at the time and place specified in the enclosed notice.

In testimony whereof, I have hereunto set my hand and official seal, this 10th day of February, A. D. 1881.

J. CLIFFORD DOUGLASS,
Notary Public.

Fees.	
Witness	$1 00
Notary—writing deposition and certificate	2 50
	$3 50

Rec'd payment, J. C. Douglass.
Filed Feb. 14th, 1881.

43 THE UNITED STATES OF AMERICA, *Northern District of Ohio.*

In the Circuit Court, Western Division.

LYDIA M. FUSSELL, Plaintiff, *against* DANIEL GREGG *et al.*, Defendant-. } Bill in Chancery. Notice.

Depositions in this action will be taken by the plaintiff at the office of Felix R. Sullivant, Esq., No. 1 Law Building, St. Paul street,

city of Baltimore and State of Maryland, on the fifth day of March, A. D. 1881, between nine o'clock a. m. and nine o'clock p. m., and the examination will be adjourned from day to day thereafter, and the plaintiff's deposition will also be taken. Dated February 26th, A. D. 1881.

JERAMIAH HALL,
Solicitor for Plaintiff.

Service of the above notice is acknowledged this 28th day of February, A. D. 1881.

WEST, WALKER AND WEST,
Att'ys for Defendants.

Depositions of witnesses taken in an action pending in the United States circuit court for the northern district of the State of Ohio, western division, wherein Lydia M. Fussell is plaintiff and Daniel Gregg *et al.* are defendants, and for said plaintiff at the time and place hereinafter certified.

44 Present: Jeremiah Hall, solicitor for plaintiff, and Arthur Geo. Brown, attorney for defendants.

Ann E. Porter.

ANN E. PORTER, of city of Baltimore, State of Maryland, of lawful age, being by me first duly sworn as hereinafter certified, deposes as follows:

Q. 1. State your name, age, and place of residence?

A. My name is Ann E. Porter; sixty years of age; residence, Baltimore city.

Q. 2. Are you acquainted with Lydia M. Fussell of the city of Baltimore, plaintiff in above action; if so, state who were her father and mother?

A. I am acquainted with her; she was the daughter of Sarah Ann Hart, daughter of Joseph Hart; her father's name was Gordon; I don't recollect his Christian name; her mother was an own cousin of mine.

Q. 3. State whether or not her parents were respectable, and how they were recognized?

A. They were very respectable and were recognized as husband and wife.

Q. 4. Did Mrs. Fussell have any brothers or sisters; and, if so, who were they, and are they dead or alive?

A. She only had one sister, and no brothers; they were infants when their mother died.

Q. 5. About what time did her mother and father die?

A. Her mother died about fifty years ago and her father died about two months after her mother died; her mother died of consumption and her father of small-pox; her sister also died some years ago.

45 Cross-examination by defendants' counsel:

X-Q. 6. You state that the maiden name of Lydia M. Fussell's mother was Sarah Ann Hart and that she died about fifty

years ago. Please state where Mrs. Fussell's mother died and all that you recollect personally about the circumstances of her death?

A. I recollect nothing particular about the circumstances of her death, except that she died of consumption, and at her father's house on Greenmount ave.

Q. 7. In what year did she die?

A. I do not remember the year.

Q. 8. When did your acquaintance with Mrs. Lydia M. Fussell begin, and where were you living and where was she living at the time?

A. From childhood; I was living in Baltimore, but do not recollect the exact locality. Mrs. Fussell was then living on Greenmount ave., Balto., but she afterwards removed to the country to live with her aunt.

Q. 9. How do you know that Sarah Ann Hart's father's name was Joseph Hart?

A. I know it because he was my uncle; he married my father's sister.

Q. 10. When did Joseph Hart die and where?

A. I can't state the exact year he died, but I know that he died at his country place on Miller's Island. My recollection goes back to the time of his death, but cannot state particulars; but his death occurred some years ago.

Q. 11. How old were the father and mother of Mrs. Fussell respectively at the time of their death, or were they young or old people?

46 A. I do not recollect the dates, but they were young people.

Q. 12. When were they married, and where?

A. Cannot recollect, being too young, but I knew they were married.

Q. 13. Were you present at their wedding?

A. I was not.

Q. 14. State, as nearly as you can, your exact age at the time Mrs. Fussell's mother died.

A. I was only a little girl, about ten years old; she has been dead for more than fifty years, and my age is now sixty.

Re-examination by solicitor for plaintiff.

Question 1. The plaintiff, Mrs. Fussell, having come into the office since your examination, state whether or not you recognize her as the lady to whose identity you have been testifying.

Answer. I do, sir.

ANN E. PORTER.

Also RACHEL A. PORTER, of the city of Baltimore, State of Maryland, of lawful age, first being by me duly cautioned and sworn, as hereinafter certified, deposes and says, as follows:

Question 1. State your name, age, and place of residence.

Answer. My name is Rachel A. Porter; my age is about fifty-four years, and I reside in Baltimore.

Q. 2. What knowledge have you of Mrs. Lydia M. Fussell, the plaintiff in this action?

47 A. I have known her ever since childhood, and we were about the same age; her mother was a cousin of mine, and I know her to be a grand-daughter Joseph Hart; Mrs. Fussell is a widow and very respectable; I never knew her husband.

Cross-examination by defendants' counsel:

X-Q. 3. What personal knowledge or acquaintance, if any, had you with the parents of Mrs. Fussell, or either of them?

A. I have a very faint recollection of her mother; know there was such a person, but I can't describe her.

Q. 4. You say that Mrs. Fussell was married; were you present at her wedding; if so, state when and where she was married and by whom.

A. I was not present, and do not know anything at all about her marriage.

Re-examination by solicitor for plaintiff:

Question 1. The plaintiff, Mrs. Fussell, having come into the office since your examination-in-chief, state whether or not you recognize her to be the lady to whose identity you dave been testifying.

Answer. I do.

RACHEL ANN PORTER.

Also Mrs. LYDIA M. FUSSELL, the plaintiff in this action, of the city of Baltimore, State of Maryland, of lawful age, being by me first duly cautioned and sworn, as hereinafter certified, deposes and says, as follows:

48 Defendants' counsel objects to Mrs. Fussell's testifying in her own behalf, and to each and all the answers she may give to such questions as may be asked her.

Q. 1. State your name, age, and place of residence.

A. My name is Lydia M. Fussell; my age is fifty-three on last birthday; I reside in Baltimore city, State of Maryland.

Q. 2. State who were your father and mother, and who they were, and who were their ancestors?

A. My father's name was Archibald Gordon; my mother's maiden name was Sarah Ann Hart, and her father was Joseph Hart, late of Baltimore, who died at Miller's Island, Chesapeake Bay, about twenty-nine years ago; my father was a son of Archibald Gordon, of Elkton, Cecil county, Md.

Q. 3. State whether or not you know from reputation that your grandfather, Archibald Gordon, was a Revolutionary soldier and pensioner of the United States Government?

(Question objected to by defendants' counsel.)

A. I have always heard that he was a Revolutionary soldier, and a pensioner of the United States Government therefor.

(Answer objected to by defendants' counsel.)

Q. 4. State whether or not your father and mother are dead, and, if dead, about what time they respectively died?

A. They are both dead; my mother died first, about fifty years ago, on 13th day of February; precise year I forget. My father died on 13th following April, just two months after my mother died. My mother died of consumption, and my father died of small-pox. They both died in Baltimore city, State of Maryland, at their residence on Greenmount ave.

49 Q. 5. At the death of your father and mother did they, or either of them, make a will or wills?

A. None that I ever knew of or heard of.

Q. 6. At their death, how many children, if any, did they have?

A. There were only two children, myself and my sister, Sarah Priscilla Gordon.

Q. 7. Who did your sister Sarah marry; if she bore any children, state how many; and is she or her husband living or dead?

A. She married William H. Kelley; she had three children, all of whom are dead; her husband and herself are both dead.

Q. 8. State whether your sister Sarah, Mrs. Kelly, left any will?

A. She left no will.

Q. 9. What were the ages of the children at their death?

A. Two of them died before their mother died; one was about one year old, and the other an infant of a few hours. One of the three children, named Mary Elizabeth, survived its mother, and was nine years six months and three days old when she (the child) died.

Q. 10. About what was the age of your sister Sarah at her death, and state about when her death occurred?

A. She was twenty years and twelve days old when she died; she died May 12th, 1853.

Q. 11. About what was your sister's age at the date of her father's and mother's death?

A. She was about twenty-two months old when her mother died.

Q. 12. Which was the elder, your sister or yourself?

A. Myself; I was near about three and a half years to four years older than my sister.

50 Q. 13. At what time were you married, and to whom?

A. I think on 31st October, 1855; I was married to Joseph B. Fussell; and there is filed with my deposition in the action of Lydia M. Fussell vs. E. S. Hughes *et al.* a certificate marked Exhibit "A," which shows the marriage license of my husband and myself; also Exhibit "B," which shows a marriage license issued to William H. Kelley and Sarah P. Gordon; also Exhibit "C," which shows a marriage license issued to Archibald Gordon and Sarah Ann Gordon; which exhibits are referred to and made a part of this deposition.

Q. 14. State, if you can, about what time your sister Sarah's husband, Wm. A. Kelley, died?

A. He died two or three years after my sister Sarah's death and previous to his surviving child's death.

Q. 15. Were any of your sister Sarah's children married, or did they leave issue?

A. They died infants; were never married, and no issue.

Q. 16. State about what time your husband died?

A. He died 6th October, 1865, at Friendfield, Marion district, South Carolina.

Q. 17. State now whether or not, from the information you have of your father's ancestry, whether your grandfather had any other children than your said father?

A. I never heard of any.

(Objection. Last foregoing question and answer objected to by defendant's counsel, on ground that witness has no personal knowledge or certain information concerning the matter referred to.)

51 Q. 18. Then, we are to understand that you claim to be the sole surviving heir-at-law of your father and grandfather, Archibald Gordon, to any estate that may have been left by them, or either of them?

(Question objected by by defendant's counsel, as a leading question.)

A. I do not claim to be the sole surviving heir.

Q. 19. State whether or not you ever employed any attorney in Ohio to withdraw or in any manner interfere with the location of any lands located in the Virginia military district in Ohio for your grandfather, founded upon the military warrant No. 6508, issued to him for his military services in the Virginia Continental army during the war of the Revolution, a duplicate of which is filed with the deposition of Lydia M. Fussell in the action of Lydia M. Fussell *vs.* E. S. Hughes *et al.*, and which is here referred to and made a part of this deposition, marked Exhibit "D2"

A. I never did.

Q. 20. What knowledge had you of Eleazer P. Kendrick, the principal surveyor of the Virginia military district in Ohio, entering a withdrawal of a location of lands in the Virginia military district of Ohio, No. 12017, for two hundred acres of land, founded on the said military warrant of record in his office?

(Question objected to by defendant's counsel, as a leading question.)

A. I have no knowledge of it whatever.

Q. 21. What knowledge, if any, did you have of one Daniel Gregg making a survey of one hundred acres of land upon a part
52 of the land previously located and surveyed for your said grandfather upon said military warrant?

A. No knowledge whatever.

Q. 22. State whether or not you authorized Gregg, or any other person, to withdraw the location of lands made in said district for your said grandfather upon his said warrant.

A. I never did.

Q. 23. State from whom you derived your first information respecting the withdrawal entered upon the record of the location of lands made upon the said warrant for your grandfather, and of the said survey, in the name of the said Gregg, made upon the said location of your grandfather.

A. I heard it from Mr. Hall, my counsel, about six years ago.

Q. 24. Where have you lived during your whole life?

A. During the early part of my life, from the time my parents died until I was about twenty-six years of age, I resided with my grand-aunt (my Grandfather Hart's sister, Mrs. Baker, wife of John Baker) in Baltimore county, near Govanstown, Md. After that, for two years, I was visiting in Connecticut and also in Baltimore city. At the end of two years I married, and then removed to the South, living in Virginia and South Carolina until my husband's death in 1865; after his death I returned to Baltimore, where I have since resided; I am a widow with four surviving children.

Cross-examination by defendant's counsel:

53 Question 1. What property or estate, if any, did your father or mother leave, and where was it administered on?

Answer. I don't think that either of them left *left* any estate that was administered on.

Q. 2. You have spoken of their residence on Greenmount ave.; who owned the house they then lived in?

A. I do not know who owned it; they lived with my Grandfather Hart.

Q. 3. After you left the house of your aunt, Mrs. Baker, when you were twenty-six years of age, where did you first go, and with whom did you stay, and how long did you remain?

A. I first went to Connecticut; staid there nearly a year; I stopped with Thomas Brooks and Emily, his wife; she was my mother's sister; Mr. Thomas Brooks and his wife are both dead; they lived at Burlington, Hartford Co., Connecticut.

Q. 4. Where did you go when you left the house of Mrs. Brooks in Connecticut?

A. I went to Mrs. John B. Tidy's in Baltimore, from whose house I was married; I staid at her house from the time I left Connecticut until I was married; I was married by the Rev. Bernard McManus, partor of St. John's Catholic church, corner of Eager and Valley streets; Mrs. Tidy's residence was No. 25 E. Monument St., between Constitution and Barew Sts.

Q. 5. In what towns or places did you reside in Virginia and South Carolina after you were married?

A. I lived in Louisa Court-House, Lynchburg, and Pittsylvania Court-House in the State of Virginia, and at Friendfield, South Carolina, where my husband died.

54 Q. 6. When did you go to Lynchburg, Virginia, and when did you leave, and where did you reside while there?

A. About 1856; I went to Lynchburg from Louisa Court-House; resided in Lynchburg about seven or eight years in our rented

house; cannot recollect the name of the street, or if it had any name. From Lynchburg I went to Pittsylvania Court-House, and from there to Friendfield, South Carolina, where my husband died.

Q. 7. What, if any, was your husband's occupation when you resided in Lynchburg?

A. He was a blacksmith; worked at the shops of the Verginia and Tennessee railroad.

LYDIA M. FUSSELL.

STATE OF MARYLAND, *City of Baltimore,* } *to wit:*

I, Felix R. Sullivan, a notary public for the State of Maryland, in and for the city of Baltimore, commissioned and duly qualified, do hereby certify that Ann E. Porter, Rachael A. Porter, and Lydia M. Fussell were by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in the above-entitled cause, and that the foregoing deposition by them respectively subscribed were reduced to writing by me, and subscribed by the said witnesses in my presence, in the inclosed notice specified.

In testimony whereof I have hereunto set my hand and notarial seal, this 5th day of March, A. D. 1881.

[SEAL.] FELIX R. SULLIVAN,
Notary Public.

55 *Bill in Chancery. Notice.*

UNITED STATES OF AMERICA, *Northern District of Ohio.*

In the Circuit Court, Western Division.

LYDIA M. FUSSELL, Plaintiff,
against
DANIEL GREGG *et al.*, Defendants.

Depositions in this action will be taken by the plaintiff at the office of the auditor of the State of Ohio, in the city of Columbus, Franklin county, Ohio, on the 16th day of May, A. D. 1881, between 9 o'clock a. m. and 9 o'clock p. m., and the examination will be adjourned from day to day thereafter.

JEREMIAH HALL,
Solicitor for Plaintiff.

Dated May 9th, 1881.

Service of the above notice is acknowledged, this 10th day of May, 1881.

WEST, WALKER AND WEST,
Att'ys for Defendants.

Deposition of a witness taken in an action pending in the circuit court of the United States of the northern district of the State of Ohio, western division, wherein Lydia M. Fussell is plaintiff and Daniel Gregg *et al.* defendants, at the time and place hereinafter mentioned. Jeremiah Hall, solicitor, was present on behalf of the plaintiff, no one appearing on the part of the defendants.

56 *J. J. Hanna.*

J. J. HANNA, of lawful age, being first duly sworn by me, as hereinafter certified, deposes as follows:

Q. 1. State your name, age, occupation, and residence.

A. J. J. Hanna; age, 41; chief clerk of land department in the office of the auditor of State, Columbus, Ohio; residence, Columbus, Ohio.

Q. 2. State whether or not you have in your department in the office of auditor of State a record of withdrawals of lands in the Virginia military district of Ohio; and, if so, by whom was that record furnished, and what period of time does it cover?

A. The office contains an abstract of withdrawals in the Virginia military land district of Ohio made by E. P. Kendrick, principal surveyor of said lands in the said Virginia military district; said abstract covers the withdrawals of entries and parts of entries up to December 16th, 1850, and including entry number 15963.

Q. 3. State whether or not said abstract is certified by said principal surveyor; and, if so, make a copy thereof a part of your answer to this question.

A. The said abstract is prefaced by the following statement, to wit:

SURVEYOR'S OFFICE, VIRGINIA MILITARY DISTRICT,
CHILLICOTHE, *Dec. 16th*, 1850.

The following is an abstract of all the withdrawals of entries and parts of entries made in this office up to this date.

E. P. KENDRICK,
Principal Surveyor.

Q. 4. State whether or not said abstract states the withdrawal of entry 12017 of two hundred acres of land in said district
57 in the name of Archibald Gordon, and founded on military warrant number 6508, which entry and location was made and recorded on the 1st day of January, 1823, in the record of entries of land in the office of said Virginia military district.

A. Said abstract does not contain the withdrawal of entry number 12017.

Q. 5. State whether you have in this office a record of entries of lands in the said Virginia military district; and, if so, what day and year does said entry 12017 bear date, and is it or not in full force?

A. We have; entry 12017, as shown by our record, was first made November 11th, 1822, and the same is shown to have been withdrawn; entry 12017 again appears by our record to have been made January 1st, 1823. This last entry is not shown to ever have been withdrawn, and so far as our record shows the same is in full force.

Q. 6. State whether or not you have a record of surveys in your office; and, if so, does said entry 12017 last above named appear to have been surveyed and recorded?

A. We have, and said survey is recorded, and is dated March 25th, 1823, and recorded November 5th, 1824.

Q. 7. State whether or not there is any withdrawal entered upon the plat or survey, or any other words indicating a withdrawal on any pretense whatever.

A. There is not.

Q. 8. State whether you have a record of an entry of lands in said district number 16070 in the name of Daniel Gregg; if so, state when it was made and recorded, on what military warrant, and for what quantity of land, and what surveys or entries are referred to in making the same.

58 We have; said entry 16070 was made October 4th, 1851, on part of military warrant 442; quantity of land, 30 acres; surveys No. 9993, No. 9977, No. 9994, and No. 9978 are referred to in said entry.

Q. 9. State whether or not you have in your records an entry in the name of said Gregg of the same number, to wit, 16070, for 130 acres, or any other quantity of land except as in the before-named entry 16070, for 30 acres?

A. We have not.

Q. 10. State whether or not the record containing entry No. 16070 for 30 acres is not certified by the principal surveyor of said district?

A. It is in the words following:

SURVEYOR'S OFFICE FOR THE VIRGINIA MILITARY DISTRICT WITHIN THE STATE OF OHIO.

I, Eleazer P. Kendrick, surveyor of said military district, certify that the foregoing entries, to wit, from No. 16031 to No. 16125, inclusive, are true copies from the records of this office.

Given under my hand and seal of office, at Chillicothe, this 5th day of March, 1852, and the 76th year of the Independence of the United States.

[SEAL.] E. P. KENRICK.
J. J. HANNA.

Also JEREMIAH HALL, of lawful age, being first duly sworn as hereinafter certified, deposed as follows:

59 Q. 1. State your name, residence, and occupation.

A. My name is Jeremiah Hall; my age is 67 years; my residence, Pickaway county, Ohio; and by occupation and profession a lawyer.

Q. 2. Are you familiar with the original records of location of lands in the Virginia military district of Ohio?

A. I am; and as attorney or solicitor for the plaintiff in this action I have examined the original record of entry, and also of the survey in the office of the principal surveyor of said district, in respect to entry and survey No. 12017.

Q. 3. State in whose handwriting the entry and survey No. 12017 of two hundred acres of land in the name of Archibald Gordon, founded on military warrant No. 6508, and made the entry on the 1st day of January, 1823, and surveyed on the 25th of March, same year, is recorded?

A. In the handwriting of Richard C. Anderson.

Q. 4. In whose handwriting is the word "Withdrawn" entered upon said entry and survey?

A. In the handwriting of E. P. Kendrick; the words "State line," also written on the plat of said location and survey, is in the handwriting, and were so written in pencil.

Q. 5. State what he said about the writing of said words on said records when inquired of why they had been written there, and by what authority?

A. He said he supposed Gordon's location had been made upon a State line warrant, and upon that authority or supposition he had entered a withdrawal of said location of record.

60 Q. 6. Did he claim any authority to enter a withdrawal of said location from Gordon or any one claiming under him?

A. He did not; but said he had no knowledge of Gordon or any one claiming under him, at the time he wrote the withdrawal, and the words "State line" on the record.

Q. 7. State whether you at any time enquired of him about the military warrant and original survey, and, if so, what did he say?

A. I did; he said he had no knowledge of those papers; he said he had made diligent search for them in the office, and could not find them; that he had never seen said military warrant, nor the original survey in said location, but suggested that they might perhaps be found in the possession of said Daniel Gregg, and advised me to see Mr. Gregg, which I did, and also wrote to him; he did not, however, answer my letter, and when I went to see him in person, he denied all knowledge of the papers; I then inquired of Mr. Kendrick whether he could not give me a copy of the survey without the words "Withdrawn" and "State line," and a certificate of the validity of the location, so that I might procure the location to be carried into patent on a duplicate warrant; he said he could not do it, and requested me to again go and see Gregg, which I declined.

Q. 8. Have you ever been upon the ground covered by said location, and, if so, when?

A. I have been there several times; once or twice recently.

Q. 9. Do you know just how the location was situate
61 previous to the encroachment upon it by Cadwallader Wallace and said Gregg in respect to other locations?

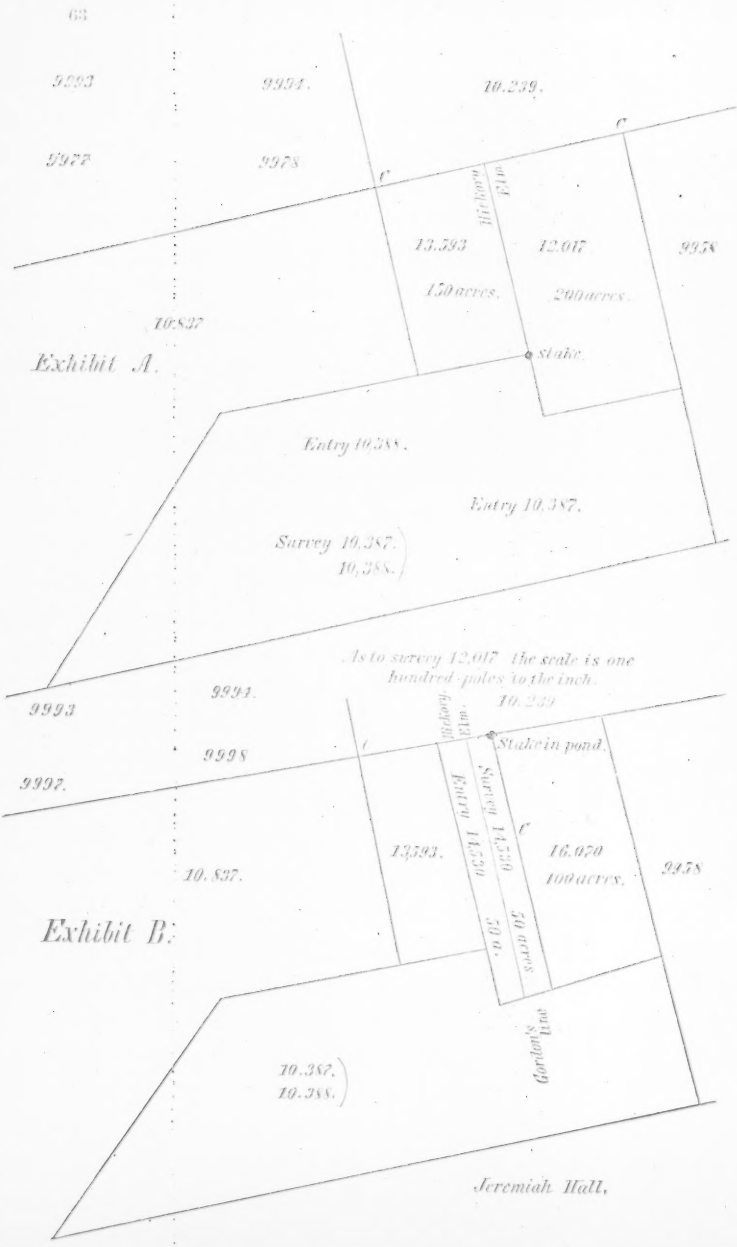
A. I think I do; and also just how it was situated after their encroachments, and how it was done, and I herewith annex and make a part of this answer two plats, marked Exhibits "A" and "B," Exhibit "A" representing Gordon's location, 12017, as upon a scale of one hundred poles to the inch. This Exhibit "A" represents Gordon's location with the surrounding and abutting surveys and locations previous to the making of the entry 14530 for 50 acres, and the survey thereof in the name of said Wallace, and the making of the survey 16070 for 100 acres in the name of said Daniel Gregg; and Exhibit "B" represents the situation of the several locations after the encroachments, demonstrating, as I believe, clearly just how Wallace made an entry on the west side of Gordon's location of 50 acres of land, and just how he surveyed the same entry on

the east side of Gordon's west line, and so covering 50 acres of Gordon's location, and also demonstrating how said Gregg covered the remainder of Gordon's location by a survey of 100 acres of a wild-cat entry, or entry not describing any land. These exhibits are in my own handwriting, and signed by me.

JEREMIAH HALL.

I, John F. McFadden, a notary public within and for Franklin county, Ohio, do hereby certify that J. J. Hanna and Jeremiah
62 Hall were by me severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions by them respectively subscribed, as above set forth, were reduced to writing by myself, in the presence of the witnesses above named respectively, and were respectively subscribed by said witnesses in my presense, and were taken at the time and place in the annexed notice specified; that I am not counsel or attorney, or relative of either party, or otherwise interested in the event of this suit.

JOHN F. McFADDEN.
Notary Public.


63
9993
9994.
10.339.
9977
9978
C
C
Hickory Elm
13.593
12.017
9958
150 acres.
200 acres.
10837
Stake.
Exhibit A.
Entry 10.388.
Entry 10.387.
Survey 10.387.
10.388.
As to survey 12.017 the scale is one hundred poles to the inch.
9993
9994.
10.339
Hickory Elm.
9998
9997.
C
Stake in pond.
Survey 13.593
Survey 12.017
Survey 16.070
13593.
16.070
100 acres.
9958
10.837.
20 acres.
Exhibit B.
Gordon's Line
10.387.
10.388.
Jeremiah Hall.

64 Depositions in a certain cause and action in chancery pending in the circuit court of the United States for the northern district of Ohio, western division, wherein Lydia M. Fussell is complainant and Daniel Gregg and others defendants, to be read in behalf of complainant in said action, taken before me, a notary public within and for the county of Logan, State of Ohio, pursuant to the annexed notice, and at the time and place therein specified. Present on behalf of complainant, Jeremiah Hall. Present on behalf of defendant—

WILLIAM CALLIHAN, of lawful age, being by me first duly sworn, as hereinafter certified, to tell the truth, the whole truth, and nothing but the truth, deposes and says as follows:

1st question by complainant's counsel. What is your name, age, residence, and occupation?

A. William Callihan; age 65 years; Boke's Creek township, 2 miles south of Ridgway; farmer; also justice of the peace.

Q. 2nd. How long have you resided in this part of Boke's Creek township?

A. For over forty-one years.

Q. 3rd. State whether you have known the survey of land in the name of Gordon, 12017, in this township; and, if so, how long have you known it, and where is it situate in respect to your residence and the village of Ridgway?

A. Yes, sir, I have known said survey; I have known said survey of land thirty-five years. It is situate between my residence and the village of Ridgway.

Q. 4th. What was the condition of this Gordon tract of land in 1860 in respect to improvements?

65 A. If my memory serves me right, there was not much improvement on it in 1860.

Q. 5th. State if previous to that time there had been any squatters on the land?

A. There had been previous to that time squatters on the land. Some person had built a pair of double cabins on the land near the east line and near the north end, but I have no knowledge who built them.

Q. 6th. What other cabins, if any, had been built on the land previous to that time, 1860?

A. Jesse Downward and his son, Edward Downward, built a cabin on that land, I think, previous to 1860. It was built very near where Smithson's house now stands. I have no knowledge of any other.

Q. 7th. State, if you know, how much of that survey was enclosed by fence, if any, previous to 1860?

A. Where the double cabins stood there was one and a half or two acres improved and with a fence around it, and was used and occupied by those who occupied the cabins.

Q. 8th. State how much, if any, had been improved about the Downward cabin?

A. There was very little there; there might have been a quarter or half an acre also under fence.

Q. 9th. State, if you know, what became of the Downward cabin and the improvements made there?

A. The Downward cabin was burnt immediately Downwards left it, and the enclosure destroyed, or the fence torn down, and it thrown out to commons.

66 Q. 10th. State whether the residue of the Gordon land was in forest, or if the timber was destroyed, how was it so destroyed, and by whom?

A. The residue of the Gordon land was all in forest, and there was a large amount and portion of the timber taken away and destroyed; mostly by trespassers; all destroyed before 1860 was destroyed by trespassers.

Q. 11th. State if you know the condition of that part of this survey now occupied by the family of Mr. Shelby Hews.

A. That part of the Wallace survey 14530, occupied by E. S. Hews and wife, being about 18 or 19 acres, prior to 1850 had a house built on it; was part of it cleared and possibly all of it fenced.

Q. 12th. State if you know what was the condition of the residue of the Wallace survey 14530.

A. Prior to 1860 the residue of the Wallace survey 14530, not occupied by E. S. Hews and wife, was unenclosed and unimproved.

Q. 13th. What improvement, if any, did the defendant Daniel Gregg make upon his survey 16070?

A. He never; to my knowledge made any improvement on his survey 16070, or any other part of the Gordon survey 12017.

And further this deponent saith not.

WILLIAM CALLAHAN.

At the same time and place came WILLIAM E. PENDRY, of lawful age, who being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, as hereinafter certified, de-

67 poses and saith, as follows:

William E. Pendry.

1 Q. by complainant's counsel. State your name, age, residence, and occupation.

A. William E. Pendry; age, 56 years; residence, Boke's Creek township, about four miles southeast of Ridgway; farmer.

2 Q. Are you acquainted with the survey of Archibald Gordon; and, if so, how far is it situate south of Ridgway?

A. I am acquainted with it by that name, but did not know the number of the survey; it is situate about half a mile south of Ridgway, in Boke's Creek township, Logan county.

3 Q. How long have you known said survey of land?

A. About twenty-five years.

4 Q. What was its condition when you first became acquainted with it in regard to improvements?

A. When I first became acquainted with it it had no cabins on it or other improvements; it was then in the forest.

5 Q. Who built the first cabin on it, and about where was it situate?

A. I do not know who built the double cabin where Higgins lives now; John Hosack was the first man who lived — to my recollection. The next man who lived there in that cabin was a man named Patrick Duffy. The next man to my knowledge who lived in it was Washington Higgins, who remained there until his mother bought from Gregg.

6 Q. State if you know how these parties claimed right?

A. They were squatters, as I always understood.

68 7 Q. State if you know how much land was enclosed there and cleared when Hosack lived there, and when Duffy lived there, also Higgins.

A. When Hosack lived there there was to my knowledge not anything but the cabin; when Duffy lived there he cleared a little space about the house and fenced it in; while Higgins lived there he cleared a considerable field and fenced it in.

8 Q. State what you know about Downward's living on the premises.

A. Ed. Downward built a cabin on the land about 1856; I do not think he staid on it over a year.

9 Q. Did his father, Jessie Downward, ever live on this land?

A. I think he did not.

10 Q. How much improvement did Ed. Downward make there?

A. None but build the cabin.

11 Q. What became of the cabin after he moved out of it?

A. A year or two afterwards I saw the few remaining brands of what did not burn up lying there. There was then still no enclosure of any kind there.

12 Q. Was there any other cabin than those you have mentioned built there; and, if so, where?

A. A colored man built a cabin there previous to 1861, just how long previous I cannot say, and moved into and occupied it a year or two, then he left it and went off; I understood him to be a squatter; he made no enclosure of any ground; about 1864 I took a lease of Mr. T. S. Wright, and sometime after the colored man left I moved into the house or cabin built by the colored man.

69 13 Q. At the time you went there in 1864, as the tenant of Wright, what other occupants were there upon the land other than those you have stated above?

A. There were no other occupants; Shelby Hews lived on the Wallace survey, north end.

14 Q. State whether or not the Gordon location of land was in the forest, or in what condition was it with respect to improvements other than what you have stated?

A. It was in the forest.

15 Q. How long did you live on the land?

A. I lived on the land as the tenant of T. S. Wright for about four years.

And further this deponent saith not.

his
WILLIAM E. x PENDRY.
mark

Attest: G. W. SWALLY.

WILLIAM CALLIHAN re-called and further examined:

14 Q. State if you have any personal knowledge of how said Jessee Downward was claiming the Gordon survey of land.

A. Yes, sir; I saw a title that Jessee held in his possession; he claimed it to be from one of the Gordon heirs, whose given name I do not recollect.

15 Q. He was then claiming under Gordon's title, and what did he claim for his son?

A. He was claiming under Gordon's title, and claimed his son was the tenant.

And further this deponent saith not.

WM. CALLIHAN.

70 THE STATE OF OHIO, } ss:
Logan County, }

I, Thomas S. Brown, a notary public within and for the county and State above named, duly commissioned and qualified, do hereby certify that the above-named William Callihan and William E. Pendry, by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions by them subscribed as above set forth, were reduced to writing by me, who is not interested in the suit, in my presence and in the presence of the witnesses respectively, and were subscribed by the said witnesses in my presence, and were taken at the time and place specified in the annexed notice; that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

In testimony whereof, I have hereunto set my hand and official seal, this 1st day of June, A. D. 1881.

THOMAS S. BROWN,
Notary Public.

Received of Jeremiah Hall five dollars ($5.00), in full of my fees for taking this deposition.

THOS. S. BROWN, *N. P.*

Witness fees, also constable fees, paid by Jeremiah Hall.

THOS. S. BROWN, *N. P.*

THE UNITED STATES OF AMERICA, *Northern District of Ohio:*

In the Circuit Court, Western Division.

71 LYDIA M. FUSSELL, Plaintiff,
vs.
DANIEL GREGG *et al.*, Defendants. } Bill in Chancery. Notice.

Depositions in this action will be taken by the plaintiff at the office of William Callahan, Esq., justice of the peace in Boke's Creek township, Logan county, Ohio, on the 31st day of May, A. D. 1881, between 9 o'clock a. m. and 9 o'clock p. m., and the examination will be adjourned from day to day thereafter.

JEREMIAH HALL,
Solicitor for Pl'f.

Dated May 23d, 1881.

Service of the above notice is acknowledged, this 25th day of May, 1881.

WEST, WALKER & WEST,
Att'ys for Defendants.

For whom they file pleas.

Depositions filed June 7, 1881.

Depositions for Defendants.

UNITED STATES OF AMERICA,
Northern District of Ohio, Western Division.

LYDIA M. FUSSELL }
vs. } Bill in Chancery. Notice.
DANIEL GREGG *et al.* }

The plaintiff will take notice that on Monday, the 21st day of March, A. D. 1881, the defendants will take the depositions of the defendants and sundry other witnesses, to be sued as evi-
72 dence on the trial of the above cause, at the office of West, Walker and West, in the village of Bellefontane, in the county of Logan, in the State of Ohio, between the hours of 8 o'clock a. m. and six o'clock p. m. of said day, and that the taking of the same will be adjourned from day to day between the same hours until they are completed.

WEST, WALKER AND WEST,
Att'ys for Defendants.

Service of the above notice is acknowledged.

JEREMIAH HALL,
Solicitor for Plaintiff.

Done this 14th day of March, 1881.

Depositions in a certain cause and bill in chancery pending in the circuit court of the United States for the northern district of Ohio, western division, wherein Lydia M. Fussell is complainant and Daniel Gregg and others are defendants, and for the defendants.

Taken in pursuance of the annexed notice, and at the time and place therein mentioned.

Present on behalf of defendants, W. H. West; present on behalf of complainants, Jeremiah Hall.

Samuel A. Buchanan.

SAMUEL A. BUCHANAN, of Logan county, of full age, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, as hereinafter certified, deposes as follows:

By defendants' counsel:

1st Question. State your name, age, residence, and occupation.
Answer. Samuel A. Buchanan; civil engineer and surveyor.
2n- Q. What means have you had to become acquainted

WILLIAM CALLIHAN re-called and further examined:

14 Q. State if you have any personal knowledge of how said Jessee Downward was claiming the Gordon survey of land.

A. Yes, sir; I saw a title that Jessee held in his possession; he claimed it to be from one of the Gordon heirs, whose given name I do not recollect.

15 Q. He was then claiming under Gordon's title, and what did he claim for his son?

A. He was claiming under Gordon's title, and claimed his son was the tenant.

And further this deponent saith not.

WM. CALLIHAN.

70 THE STATE OF OHIO, }
Logan County, } *ss:*

I, Thomas S. Brown, a notary public within and for the county and State above named, duly commissioned and qualified, do hereby certify that the above-named William Callihan and William E. Pendry, by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions by them subscribed as above set forth, were reduced to writing by me, who is not interested in the suit, in my presence and in the presence of the witnesses respectively, and were subscribed by the said witnesses in my presence, and were taken at the time and place specified in the annexed notice; that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

In testimony whereof, I have hereunto set my hand and official seal, this 1st day of June, A. D. 1881.

THOMAS S. BROWN,
Notary Public.

Received of Jeremiah Hall five dollars ($5.00), in full of my fees for taking this deposition.

THOS. S. BROWN, *N. P.*

Witness fees, also constable fees, paid by Jeremiah Hall.

THOS. S. BROWN, *N. P.*

THE UNITED STATES OF AMERICA, *Northern District of Ohio:*

In the Circuit Court, Western Division.

71 LYDIA M. FUSSELL, Plaintiff, }
vs. } Bill in Chancery. Notice.
DANIEL GREGG *et al.*, Defendants. }

Depositions in this action will be taken by the plaintiff at the office of William Callahan, Esq., justice of the peace in Boke's Creek township, Logan county, Ohio, on the 31st day of May, A. D. 1881, between 9 o'clock a. m. and 9 o'clock p. m., and the examination will be adjourned from day to day thereafter.

JEREMIAH HALL,
Solicitor for Pff.

Dated May 23d, 1881.

Service of the above notice is acknowledged, this 25th day of May, 1881.

WEST, WALKER & WEST,
Att'ys for Defendants.

For whom they file pleas.

Depositions filed June 7, 1881.

Depositions for Defendants.

UNITED STATES OF AMERICA,
Northern District of Ohio, Western Division.

LYDIA M. FUSSELL
vs.
DANIEL GREGG *et al.* } Bill in Chancery. Notice.

The plaintiff will take notice that on Monday, the 21st day of March, A. D. 1881, the defendants will take the depositions of the defendants and sundry other witnesses, to be sued as evi-
72 dence on the trial of the above cause, at the office of West, Walker and West, in the village of Bellefontaine, in the county of Logan, in the State of Ohio, between the hours of 8 o'clock a. m. and six o'clock p. m. of said day, and that the taking of the same will be adjourned from day to day between the same hours until they are completed.

WEST, WALKER AND WEST,
Att'ys for Defendants.

Service of the above notice is acknowledged.

JEREMIAH HALL,
Solicitor for Plaintiff.

Done this 14th day of March, 1881.

Depositions in a certain cause and bill in chancery pending in the circuit court of the United States for the northern district of Ohio, western division, wherein Lydia M. Fussell is complainant and Daniel Gregg and others are defendants, and for the defendants.

Taken in pursuance of the annexed notice, and at the time and place therein mentioned.

Present on behalf of defendants, W. H. West; present on behalf of complainants, Jeremiah Hall.

Samuel A. Buchanan.

SAMUEL A. BUCHANAN, of Logan county, of full age, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, as hereinafter certified, deposes as follows:

By defendants' counsel:

1st Question. State your name, age, residence, and occupation.
Answer. Samuel A. Buchanan; civil engineer and surveyor.
2nd Q. What means have you had to become acquainted

with the location of the several surveys and lots of land
73 in the Verginia military district in Logan county, Ohio?

A. Under the employment of the county commissioner of Logan county I prepared and superintended the preparation of and making of the maps and plats of all the lands in Logan county, in the years 1879 and 1880, for the use of the land assessors, showing therein the location of the original surveys and sections, and of the several farms into which the same have been subdivided, with the boundaries thereof, and thus necessarily became familiar with them.

3rd Q. State what the plat or map now shown to you is, and annex it as an exhibit to this your deposition.

A. The paper handed me I now mark A, and write my name upon it, and annex it as an exhibit to this my deposition. It is a plat or map of original Verginia military surveys numbered 12017, 13593, 14530, and 16070, in Logan county, showing their relative position to each other, and of the farms into which the second two are subdivided.

4th Q. What apparent conflict, if any, is there between these surveys?

A. Survey 12017 appears by the record to cover survey 16070 in part; whether it entirely covers it by the actual boundaries on the ground I have never traced, nor have I ever traced on the ground the original western boundary of 12017 to ascertain whether, as surveyed, it conflicts with 14530 or not, but from the record it would seem to; to what extent, however, can only be determined by
74 tracing the original boundaries and ascertaining the original measurements by actual survey.

5 Q. What means have you of knowing the length of the several lines of survey No. 16070, and what are they?

A. The plats and maps made under my supervision from the land records of Logan county, according to these the length of the north line is 136 poles, the east line 295 poles, and the south line 136 poles, and the west line 295 poles.

6 Q. Who are the several owners of said survey 16070, and how many acres are owned by each?

A. William Swissgood, 50 acres on the north end; Andrew Murdock, 32½ acres next south of William Swissgood, and $42\frac{11}{100}$ acres on the south end; James Eaton, $46\frac{12}{100}$ acres next south of Murdock's 32½ acre lot; W. G. Smithson, $42\frac{11}{100}$ acres next south of Eaton's $40\frac{12}{100}$ acres; Granville Smithson, $42\frac{11}{100}$ acres; Granville Smithson and W. G. Smithson are one and the same person.

Cross-examined by JEREMIAH HALL:

X Q. 1. Have you the means of knowing how the several parties in possession of said land claim to derive title to the lands embraced within survey 12017 or 16070 or 14530?

A. Nothing but the land records.

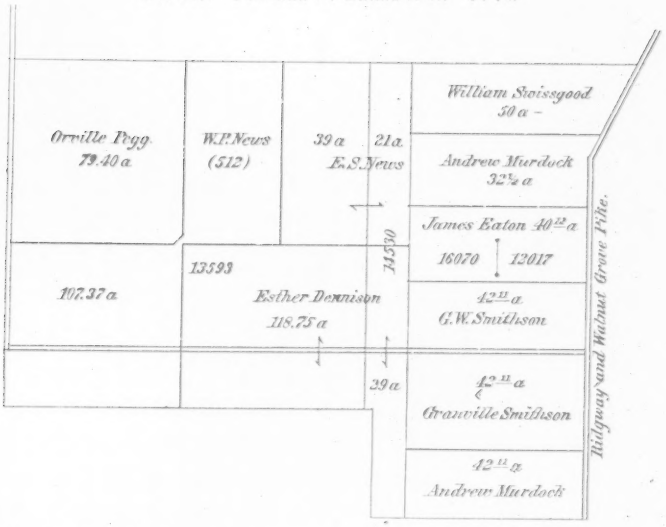
X. Q. 2. Then you mean to say that the land assessed to the said several parties for taxes are, as above stated, taxed to them on the duplicate?

A. Yes; the parties named above are asssessed in survey 16070.

S. A. BUCHANAN,
Surv. & Eng'r.

EXHIBIT A.

No. 147. FUSSELL *vs.* GREGG *et al.* P. 75.



March 18th, 1881.

Plat of surveys 13593, 14530, and 16070, Logan county, Ohio.

By S. A. BUCHANAN, *Surveyor.*

Fees, $2.

And thereupon the taking of these depositions was adjourned until to-morrow at and between the same hours.

March 21st, 1881.

THOMAS S. BROWN, *N. P.*

76 TUESDAY, *March 22nd*, 1881, at 8 o'clock a. m.

At the time and place to which said adjournment was had personally came William P. Hughes, of Logan county, of lawful age, who, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, as hereinafter certified, deposes as follows:

William P. Hughes.

By defendant's counsel:

1 Question. State your name, age, and residence.

Answer. W. P. Hughes; fifty-seven years about; on survey 13593, about two hundred and fifty rods west of survey 16070, in Logan county, Ohio, where I have resided about twenty-seven years con-

tinuously, and where I previously resided about thirty-three years ago.

2 Q. How long have you been acquainted with the said survey 16070?

A. At least 30 years; it was then known as A. Gordon survey.

3 Q. State, if you know, who resided on the A. Gordon survey 12017 before Daniel Gregg took possession of the same under his entry and survey 16070?

A. One Jessee Downard.

4 Q. State if you remember the fact of Gregg putting Jessee Downard out of possession thereof by a proceeding in forcible detainer?

A. Yes, I do; I do not remember the exact time, but think it was early in the year 1857.

5 Q. About how long had Downard been living thereon before he was thus ejected?

77 A. Something in the neighborhood of two years.

6 Q. Do you know what improvements William Swissgood has made on his fifty acres, part of said survey 16070? If so, state them.

A. I do; it is all under fence, and perhaps one-half under cultivation. It is well drained with underground tile ditches, but there are no buildings on it; Mr. Swissgood resides on his home farm, near half a mile distant.

7 Q. State what improvements, if any, are upon the 32½-acre tract next south of Swissgood's fifty acres?

A. It is all under fence, and perhaps one-half of it under cultivation; the woodland well set in pasture, especially the portions that have been partially cleared; a small comfortable frame house and some stabling, and a good well of water.

8 Q. What improvements, if any, are on the $40\frac{12}{100}$ acres south of that, and now owned by James Eaton?

A. There are perhaps two-thirds of it under cultivation; it is all under fence, balance wood and pasture land, which is not cultivated; there is a double log cabin on—, and a good bearing orchard; there is a log stable; as to other improvements I do not remember.

9 Q. What improvements on the Smithson tract of $84\frac{22}{100}$ next south?

A. It is all under fence, perhaps three-fourths under cultivation, balance wood and pasture land; log cabin on the north part, with a good comfortable brick house on the south part; good small barn, wood-house, and other comfortable out-buildings; a good
78 bearing orchard, and a good well of water, and good stock scales.

10th Q. What improvements are on the $42\frac{11}{100}$ acres on the south end of said survey?

A. It is all under fence, partially cleared and set in grass; there are no other improvements on it.

11 Q. How have said tracts — severally owned and occupied?

A. Higgins first owned the Swissgood fifty acres, but whether they ever had deed for it I do not know. Swissgood bought from Higgins and has occupied it ever since. Higgins also owned the 32

acres adjoining Swissgood and have occupied it ever since they bought. Andrew Murdock has a tax title, as I understand. The Eaton tract of 40 acres was first purchased from Wright or Gregg by Abner Collins, who occupied it from the time of his purchase until he sold to Eaton, who has occupied it ever since. The Smithson tract of 42 acres north of the road was previously owned by Bushong, who occupied it until he sold to Smithson, who has occupied it ever since. The other two tracts of 42 acres each have been occupied by their present owners ever since they were purchased by them.

Cross-examined by Jeremiah Hall:

1 X Q. Do you remember about the time Gregg made his survey 16070 on the Gordon survey 12017?

A. I do not know.

2 X Q. Previous to the action of Gregg against Downard of forcible detainer, the land upon which Gregg's survey was made, had it been known as Gordon's location 12017, or a part of it?

79 A. Yes, generally, as A. Gordon's survey.

3 X Q. At that time was there a house on the land, and, if so, who lived in it?

A. Yes; a cabin house occupied by Jessee Downard.

4 X Q. Who built that house?

A. I cannot say exactly; it was said to have been built by Jessee Downard; I was not there at the building of it.

5 X Q. State where, as near as you can, that house was situate upon the land?

A. It was situated south of the road known as the Watson and Pugh road on the south 42 acres now owned by Smithson.

6 X Q. Where were you at the time Downard built that house and went there to live?

A. I cannot tell.

7 X Q. Were you then living on and did you own your land in survey 13593?

A. I owned the land, but think I was not living on it at the time?

8 X Q. How did you derive your knowledge that Downard had a house there and was living in it?

A. I lived near and passed the road frequently.

9 X Q. How did you derive your knowledge that there had been a proceeding there of Gregg against Downard?

A. I think there were two suits, and I was at one of the trials.

10 X Q. Who superintended the trials on the part of Gregg?

A. I do not know.

11 X Q. About what time did Downard leave that section of country?

A. I cannot tell.

12 X Q. Cannot you tell about the time he left?

80 A. I cannot.

13 X Q. Do you know where he went to?

A. I do not.

14 X Q. Was he not there as late as 1870?

A. I think not; I think he was there during the war, or part of it.

15 X Q. Was said location or survey of Gordon 12017 at the time of Gregg's action against Downard, and the land covered by said Gordon's survey, fenced or improved, or was it in the forest?

A. It was not fenced or improved, with the exception of the lot on which Downard had built the cabin.

16 X Q. About how much did that contain?

A. I cannot tell; for all I know it may not have been more than a door yard.

17 X Q. Have you any possible information as to where Downard is, or where he went to, or where his family may be found?

A. I have not.

18 X Q. Do you remember the precise time when he moved away from that house?

A. I do not.

19 X Q. When did Gregg, or any person claiming under him, begin to improve that land, and how soon was it fenced and occupied after Downard moved away and left the premises?

A. I cannot tell, because it has been improving gradually since Gregg took possession.

20 X Q. Did Gregg himself at any time occupy the premises?

A. He never personally lived on it, so far as I know.

21 X Q. Did he clear or fence any of it; if so, when?

A. He did not personally, but I know he had men on it
81 under his supervision a short time after the proceedings he had with Mr. Downing.

22 X Q. Who were they?

A. I think W. Ellis Pendry was the first; who else I do not remember.

23 X Q. Where is Ellis Pendry?

A. He resides in Boker Creek township, Logan county, O.

24 X Q. What improvement did he make?

A. I cannot tell the extent; he made an improvement and set out an orchard.

25 X Q. Describe the nature of his improvements, building, &c.

A. He built a house, cleared and fenced a portion—as I said before, I cannot tell the extent.

26 X Q. What kind of a house was it?

A. I think the house was a cabin house.

27 X Q. What part of the land was his improvements situate upon?

A. It was near midway north and south, near the east line, north of the road on which Downard's house was built.

28 X Q. Who lived in the Downard house after he went out?

A. I cannot tell whether any one did or not.

29 X Q. Don't you remember that Downard lived there in 1860 in that house; that there was an action pending between Downard and Gregg in the court of common pleas that had been appealed from the judgment of the justice of peace of Boker Creek township,

in which action Downard claimed to be in possession of the land as the tenant of one William Seister?

A. I have no personal knowledge of the matter; I have a
82 vague, indefinite recollection of hearing of the matter, but do not remember the time; I do not think he was living on the land in 1860.

W. S. HUGHES.

W. G. Smithson.

Also at the same time and place came W. G. SMITHSON, who being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, as hereinafter certified, deposes as follows:

1 Q. By defendant's counsel. State if you are one of the defendants; and, if so, at what time you became the owner of any part of survey 16070.

A. I am one of the defendants; I bought the south 42 $\frac{11}{100}$ acres in the year 1865, then entered upon it, have been in possession thereof ever since, claiming title thereto and paying taxes thereon.

2 Q. When did you become the owner of the north forty-two $\frac{11}{100}$ acres?

A. That I cannot exactly state; the deed will show; I bought it from the heirs of James Murdock; I have been in possession, occupied it, and paid taxes on it ever since.

3 Q. Who owned and occupied the last mentioned tract before you purchased it, and for how long?

A. James Murdock owned it; his heirs continued to reside on it until I bought them out; his son-in-law lived on it from about 1869 or 1870; it was all in woods when Murdock bought it.

4 Q. What improvements have you made on the first tract you purchased?

83 A. I have put it all under fence; about three-fourths of it cleared up and under cultivation, planted out an orchard which is now bearing; I have erected a frame barn, brick dwelling house, a brick cellar, woodshed, and buggy house, two good wells and cistern, ditched with underground tile ditches.

5 Q. How is the Murdock tract improved?

A. It is all under fence, cleared and ditched with under ground tile dra-ning, a log house on it, but the the buildings do not amount to much, a good well, but no other improvements to amount to much.

Cross-examined by JEREMIAH HALL:

1 X Q. About what time did Murdock purchase the tract which you bought of his heirs?

A. I don't know; probably in 1869 or 1870; when he purchased it it was unimproved, only patches of it cut off; I do not remember that there was any fencing on it.

2 X Q. Did you know Jessee Downard?

A. Yes.

3 X Q. What do you know about his living on the Gordon survey 12017, now covered by survey 16070, or partly so?

A. Nothing.

4 X Q. How long is it since you knew him in that neighborhood, or in that country?

A. I knew him from about 1860 until his death which occurred about 1863 or 1864.

5 X Q. Did he leave any family; if so, who are they, and where may they be found?

A. He left four children, two sons and two daughters; one
84 son died in the army it is supposed; I know nothing of the other children; whether he left a widow or not I do not remember.

6 X Q. Is the family of Jane Higgins living on the survey 16070?

A. The unmarried portion of them are. They are: Frank Higgins, Angelina Higgins, Ellen Higgens are living on the place. Creighton Higgins, John W. Higgins, Sarah Beck are not on the land. The heirs of Washington and of James M. Higgins, deceased, do not reside on the land.

Re-examination:

1 Q. Where did Jessee Downard live when you first became acquainted with him?

A. I think on Squire Callahan's farm.

W. G. SMITHSON.

Andrew Murdock.

Also at the same time and place came ANDREW MURDOCK, of lawful age, who, being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, as hereinafter certified, deposes as follows:

1 Q. What is your age and residence, and how long have you there resided?

A. I am 64 years old; I reside in Boke's Creek township, Logan county, Ohio, and have for 33 years, within three or four hundred yards of the south line of survey 16070.

2 Q. Do you own any part of said survey; if so, how long?

A. I do own a part, and have since 1865; it is the south end, about 42 acres.

3 Q. What improvements are on said portion so owned by you?

85 A. It is all under fence; the east end was partially cleared when I got it, that is, it was hacked off; that part is pretty well set in grass, the balance is in woods.

4 Q. From whom did you purchase said tract?

A. From Dr. T. S. Wright, of Bellefontaine, Ohio.

5 Q. Since the time you obtained possession from said T. S. Wright, who has owned, occupied, claimed title to, and paid taxes on said tract?

A. I have.

6 Q. State any knowledge you may have of the lot bought by James Murdock north of the road, and now owned by W. G. Smithson?

A. I knew it; knew he bought it; I was present when the writings were drawn, but do not remember the time.

7 Q. State what possession, if any, was then taken of said lot by James Murdock or his tenants, and how and by whom it was occupied until sold to Smithson?

A. James Murdock put his son-in-law upon it immediately, and he occupied it until it was sold to Smithson.

8 Q. State, if you know, who first resided on that part of said survey now owned by James Eaton?

A. To the best of my recollection it was Abner Collins; he sold it to Nelson Williams, who lived on it a while, and Williams sold it to James Eaton, who has occupied it ever since.

9 Q. What improvement, if any, did Collins make on said tract and what are on it now?

A. Collins made principally all the improvements that are on it to-day. It is all under fence, a tolerably good orchard, an indifferent house, and a good well of water.

86 10 Q. To whom did Collins deliver possession?

A. To Nelson Williams, and Williams to James Eaton.

11 Q. About what time did Collins purchase and move on to said tract?

A. Collins purchased about the time I did, in 1865, and immediately moved on to it.

Cross-examined by JEREMIAH HALL:

1 X Q. At the time that Abner Collins entered upon the Smithson tract north of the road, what improvements were there at that time?

A. There was not any improvements more than that the town people had cut some wood there.

2 X Q. At the time you entered upon the tract you purchased of Wright in 1865 who had made the hacking you spoke of?

A. I don't know; it may have been done by tresspassers.

ANDREW MURDOCK.

And thereupon the taking of these depositions was adjourned until to-morrow at and between the same hours and at same place.

THOS. S. BROWN,
Notary Public.

WEDNESDAY MORNING, *March 23rd*, 1881, 8 O'CLOCK A. M.

At same place came JOHN A. COULTER, of Logan Co., of lawful age, who being first by me duly sworn to tell the truth, the whole truth, and nothing but the truth, as hereinafter certified, deposes as follows:

John A. Coulter.

1 Q. by defendants' counsel. What is your official position?

87 A. County recorder of Logan county, State of Ohio, and as such am custodian of the land records and the records of deeds of lands of and within the said county.

2 Q. What is the paper now handed you and marked B? Please identify it and annex it to this your deposition.

A. The paper now shown to me is the copy of the record of a deed now of record in the land records of Logan county aforesaid, book —, volume No. 38, pages 530 and 531, taken and truly copied by me therefrom, and by me compared with the said records, so that I personally know the same to be correctly taken, copied, and compared therewith; the copy is in my handwriting, and bears my official certificate, signature, and seal.

JOHN A. COULTER.

And thereupon the taking of these depositions was adjourned until to-morrow at and between the same hours and at the same place.

THOS. S. BROWN, *N. P.*

No farther witness being called these depositions close, this 24th day of March, A. D. 1881.

THOS. S. BROWN,
Notary Public.

"B."

ARCHIBALD GORDON TO STEPHEN F. HART.

This indenture, made and entered into this 27th day of June, in the year of our Lord one thousand eight hundred and twenty-seven, between Archibald Gordon, late of Cecil county, Maryland, of the one part, and Stephen F. Hart, of the county of Baltimore, in the State of Maryland, of the other part, witnesseth: That Archi-

88 bald Gordon, for and in consideration of one hundred dollars in hand paid by Joseph Hart, he doth grant, bargain, and sell unto Stephen F. Hart, his heirs and assigns forever, all his lands in Ohio, Indiana, and Illinois. One tract in Ohio surveyed on military warrant No. 6508, and on entry No. 12017, by D. S. of military lands, in Ohio, beginning on the waters of Rush creek at a stake N. W. corner to Alexander Parker's survey No. 9958, in the line of Sawyer's S. No. 10239; then S. 12 E. 246 poles to two beeches in the line of Sawyer's to a corner in Aikin's survey No. 10387 and 10388; then with his line of said survey S. 78 W. 134 poles to an ash and beech; then N. 12 W. 245 poles to a hickory and elm, in the line of Sawyer's said survey; then N. 78 east 154 poles to the beginning, containing two hundred acres more or less; also all the land surveyed on warrant No. 5684, and on entry No. 838, in the military tract of Ohio; also 160 acres in the military district of Illinois, patented to Archibald Gordon, to have and to hold the same forever. In witness whereof the said party of the first part hath hereunto set his hand and affixed his seal the day and year aforesaid.

ARCHIBALD GORDON. [SEAL.]

Signed, sealed, and delivered in presence of—
JOHN AISQUITH.
SAM'L F. DENVER.

STATE OF MARYLAND, }
Baltimore City, } *to wit:*

Be it remembered that on this 27th day of June, A. D. one thousand eight hundred and twenty-seven, personally appeared
89 before me the subscriber-, two justices of the peace of the State of Maryland for the city of Baltimore, Archibald Gordon, the grantor to the above deed, and he acknowledged the same to be his act and deed according to the true intent and meaning thereof, before me.

JOHN AISQUITH.
JOHN F. HARRIS.

STATE OF MARYLAND, }
Baltimore City, } *sct.:*

I hereby certify that John Aisquith and John. F. Harris, Esquires, before whom the annexed acknowledgments were made, and who have thereto subscribed their names, were at the time of so doing justices of the peace of the State of Maryland in and for the city of Baltimore, duly commissioned and sworn.

In testimony whereof, I hereunto set my hand and affix the seal of the superior court of Baltimore city, this 23d day of August, A. D. 1862.

[SEAL.] GEO. E. LANGSTON,
Clerk of the Superior Court of Baltimore City.

Received and recorded Dec. 27th, A. D. 1862.
WILLIAM CHEEVER,
Rec. S. C. O.

THE STATE OF OHIO, }
Logan County, } *88:*

I, John A. Coult-r, county recorder, in and for Logan county, Ohio, do hereby certify the foregoing writing to be a true and correct copy of a deed from Archibald Gordon to Stephen F. Hart, as recorded in records of deeds, vol. No. 38, at pp. 530 and 531, Logan county land records. In testimony whereof, I have hereunto set my hand and affixed the seal of my office, at Bellefontaine, M'ch 23, 1881.

JOHN A. COULTER,
County Recorder.

90 THE STATE OF OHIO, }
County of Logan, } *88:*

I, Thos. S. Brown, a notary public in and for the county and State above named, duly commissioned and qualified, do hereby certify that the above-named S. A. Buchanan, W. P. Hews, W. G. Smithson, A. Murdock, and J. A. Coulter were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions by them subscribed, as above set forth, were reduced to writing by me, who is not interested in this suit, in my presence and in the presence of the witnesses, respectively, an I were

subscribed by the said witnesses in my presence, and were taken at the time and place in the annexed notice specified, and were continued from day to day, as above set forth; that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

In testimony whereof, I have hereunto set my hand and official seal, this 24th day of March, A. D. 1881.

THOS. S. BROWN,
Notary Public.

Received of defendants' counsel the sum of $5.65, in full of my fees, as above specified.

The witnesses were paid their fees by defendants' counsel.

THOS. S. BROWN,
Notary Public.

Depositions filed with clerk, June 7th, 1881.

91 *Deposition of William Swissgood.*

LYDIA M. FUSSELL, Plaintiff, *vs.* DANIEL GREGG *et al.*

Deposition of a witness in a cause pending in chancery in the circuit court of the United States for the northern district of Ohio, western division, wherein Lydia M. Fussell is plaintiff and Daniel Gregg *et al.*, defendants, taken by agreement between the plaintiff and defendants the 2nd day of June, 1881.

Present on behalf of the plaintiff, Jeremiah Hall; on behalf of defendants, West, Walker and West.

WILLIAM SWISSGOOD, one of the defendants, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, as hereinafter certified, deposes as follows:

On behalf of defendants:

1 Q. What is your name and age?

A. William Swissgood; age, 64 years.

2 Q. Where did you reside in 1856?

A. In Boke's Creek township, Logan county, Ohio, about adjoining on the east side of survey 16070.

3 Q. Have you a paper in your possession purporting to be a power of attorney, signed by the defendant, Daniel Gregg? If so, produce it and annex it to this your deposition.

A. I have, and now here produce it; it bears date 12th of March, 1856; I now hand it to the notary and make it a part of my deposition.

Paper reads as follows:

92 *Power of Attorney to William Swissgood.*

Know all men by these presents, that I, Daniel Gregg, of the county of Ross and State of Ohio, to hereby constitute and appoint William Swissgood, of the county of Logan and State of Ohio, my agent and attorney-in-fact, to prevent all persons from cutting timber or other-

wise tresspassing on the following described tract of land, patented by the United States to Daniel Gregg, lying and being on the waters of Rush and Panther creeks, in the county of Logan and State aforesaid, bounded as follows: Beginning at a beech and large red-oak corner to C. Wallace survey No. 14530; thence S. 10½ E. 186 poles to an ash and beech in the line of survey No. 10387 and 10388; thence N. 79½ E. 138 poles to two beeches corner to said survey in the line of A. Parker's survey No. 9958; thence N. 10½ W. 300 poles to a stake northeast corner to said survey in the line of survey No. 10239; thence S. 79½ W. 138 poles to a hickory and elm corner to survey No. 14530; thence S. 10½ E. 114 poles to the beginning.

And the said Swissgood is hereby authorized to take charge and control of the aforesaid tract of land generally.

Witness my hand and seal, this 12th day of March, A. D. 1856.

DANIEL GREGG.

Witnesses:

WM. H. SKERRETT.
J. L. STEVENSON.

STATE OF OHIO, }
Ross County, } *ss:*

Personally appeared before me, William H. Skerrett, a
93 notary public in and for the county and State aforesaid, the within named Daniel Gregg, and acknowledged the signing and sealing of the within power of attorney.

In testimony whereof I have hereunto set my hand, this 12th day of March, 1856, and affixed my seal of office.

WM. H. SKERRETT,
Notary Public.

4 Q. What possession did you take of said survey No. 16070 in the Virginia military district in Logan county, Ohio, under said power of attorney at or about the date thereof?

A. First thing I did I stopped a man from cutting saw logs on it.

5 Q. What and how was your possession and oversight of the tract from the date of said instrument afterwards?

A. I next rented a cabin to a man by the name of Hosack.

6 Q. Who exercised control over said survey from the date of said power of attorney?

A. I did.

7 Q. Who is the Daniel Gregg whose name is signed to said power of attorney?

A. Daniel Gregg the defendant.

Cross-examined by JEREMIAH HALL:

1 X Q. State whether or not your deposition has been before taken in this action?

A. It has.

2 X Q. Did you at that time have the possession of this paper?

A. I did.

3 X Q. Why did you not produce it when your deposition
94 was before taken?

A. I did not then know that it was material.

4 X Q. State what acts you did in taking possession of that land?

A. The first I done was to stop a man from cutting saw-logs.

5 X Q. What cabin was that you rented to Hosack?

A. A cabin built by Ebenezer Wallace.

6 X Q. How long previous to your renting it to Hosack did Wallace build this cabin?

A. I think about a couple of years.

7 X Q. How did it occur that Wallace built that cabin?

A. The land was advertised to be sold for taxes; Wallace's father-in-law, William Trent, paid the taxes and authorized Wallace to build on it.

8 X Q. Did you live there at that time?

A. Yes, sir.

9 X Q. Where is Wallace now living, or is he dead?

A. I think he is dead.

10 X Q. Did he die in that house or cabin?

A. He did not.

11 X Q. How long did he live in the house?

A. Only a short time; six months, or something like that.

12 X Q. Was the house empty when you put Hosack into it?

A. It was empty, but Gregg had just previously put Duffy out of it.

13 X Q. Did you show this power of attorney to anybody?

A. I don't know that I did; I remember stopping a man from building on it who was cutting logs and had some house logs cut.

14 X Q. How much land had Wallace cleared there?

A. He had a door yard cleared, but not any other; but none fenced when I put Hosack in.

15 X Q. How much did Hosack clear?

A. A couple of acres or the like; only little patch I know.

95 16 X Q. State how near was the Wallace cabin to the east line of the Gregg survey?

A. Within the bounds of 4 or 5 rods of the east line of Gregg's survey.

17 X Q. What was the condition of this land at the time you put Hosack in the cabin in respect to improvements?

A. There were none on it; it was wholly in the forest, except the cabin and door yard.

18 X Q. Then under this power of attorney what you did was to keep people from going on the land and building houses there?

A. Yes, sir; and also to keep them from destroying the timber.

19 X Q. Did either you, under this power of attorney, or Gregg clear any land or authorize any clearing done?

A. Under my power of attorney I gave Washington Higgins authority to clear off a space and build a cabin; about three acres is what he cleared.

20 X Q. How long was that after you received this power of attorney.

A. About two years after.

21 X Q. Did you authorize Jessee Downard to build a cabin there?

A. I did not.

22 X Q. Did he build a cabin there?

A. I think he did not; his son, Edwin Downard, built one and lived in it.

23 X Q. Did Jessee Downard ever live on the land?

A. I think he did live in the house with his son.

24 X Q. By what authority did they build that cabin?

A. I cannot say.

25 X Q. How much land did they clear?

A. Nothing only the door yard.

26 X Q. What became of the house they lived in?

A. It was torn down.

96 27 X Q. How much did Vincent clear?

A. None.

28 X Q. Was there any more improvements made there on this survey of Gregg's previous to the time when W. E. Pendry took a lease there of T. S. Wright?

A. I think not.

29 X Q. What cabin did Pendry go into?

A. I think he went into the cabin that Higgins and Vincent had.

30 X Q. Can you tell about what time Pendry did go upon the land and into the cabin?

A. I could not say; I had no control of it then at all.

31 X Q. Was it before or after there was a partition of the land between Gregg, Seister and wife, and W. H. West?

A. After the partition.

32 X Q. About what time did W. H. West become interested in the land?

(Question objected to by defendant's counsel.)

A. I do not know.

33 X Q. At what time did you cease to control this land under this power of attorney, and when and how was your agency terminated?

A. When I understood it was sold I thought that terminated it.

34 X Q. Then you did understand it was sold to other parties?

A. I did.

35 X Q. Previous to your information that it had been sold to other parties had there been any other improvement made than those you have spoken of before?

A. I think not.

36 X Q. The land, then, still remained in the forest up to that time?

A. It did, with the exception of the improvements before mentioned.

37 X Q. What time did you move into the neighborhood of that land?

A. In the spring of 1848 I lived then just where I do now, right across the road from this land.

38 X Q. At the time you moved there, and subsequent
97 thereto, as whose survey was this land known and recognized by the people living there in that neighborhood?

(Question objected to.)

A. It was always called the Wallace survey.

39 X Q. I mean this particular land covered by Gregg's survey.

A. That was the land I was speaking about.

40 X Q. Then this land was not called the Gordon land?

A. I do not know anything about that; it might have been called the Gordon land.

41 X Q. Are you one of the defendants in this action?

A. I am.

42 X Q. What do you know about Gregg having made a survey of this land?

(Question objected to by defendant's counsel.)

A. I was one of the chain-carriers.

43 X Q. Who was the marker?

A. I do not remember.

44 X Q. Who was the other chain-carrier?

A. James Hoover.

45 X Q. Were you sworn as chain-carrier?

(Question objected to by defendant's counsel.)

A. I do not remember.

46 X Q. Who was the surveyor?

A. John Gunn.

47 X Q. Was Daniel Gregg there?

A. He was.

48 X Q. Was Nathaniel Hassir there?

A. I did not know him.

49 X Q. About what time did Gregg have this land surveyed?

(Objected to by defendant's counsel.)

A. I do not know exactly when it was; I think it was in the fall of the year—summer or fall.

98 50 X Q. How long was it before Gregg gave you this power of attorney?

A. I do not know; it was in 1854 or 1855 that he surveyed the land.

51 X Q. What was the state of improvements generally in that neighborhood at the time Gregg gave you this power of attorney?

(Objected to by defendant's counsel.)

A. The settlement of the neighborhood was cabins with little cleared place about them, enough for [a] family to live on.

52 X Q. About how much land in this survey 16070?

(Question objected to by defendant's counsel.)

A. Something over two hundred acres.

53 X Q. At the time you surveyed it what was [the] state of the timber there?

A. It never was a choice piece of timbered land.
And further this deponent saith not.

WM. SWISSGOOD.

THE STATE OF OHIO, }
Logan County, } *ss:*

I, Thos. S. Brown, a notary public in and for the county and State above named, duly commissioned and qualified, do hereby certify that the above-named William Swissgood was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions by him subscribed, as above set forth, was reduced to writing by me, who is not interested in the suit, in the presence of the witness, and was subscribed by the said witness in my presence, and was taken as per agreement in the caption above set forth; that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

In testimony whereof, I have hereunto set my hand and official seal, this 2d day of June, A. D. 1881.

THOS S. BROWN,
Notary Public.

Filed June 7, 1881.

99 And afterwards, to wit, on the 7th day of June, A. D. 1881, being a day of the April term of said court, there was filed in this court a certified transcript from the justice docket of the civil action between Daniel Gregg, as plaintiff, and Patrick Duffy, as defendant, which transcript is in the words and figures following, to wit:

DANIEL GREGG, Plaintiff, } Civil Action April 10th, 1857. Boke's
vs. } Creek township, Logan county, *ss.*
PATRIC DUFFY, Defendant. } Forcible Detention.

The said Daniel Gregg filed his complaint against one Patrick Duffy as follows:

John Atkinson, a justice of the peace in and for the township of Boke's Creek, Logan county, Ohio:

The undersigned, Daniel Gregg, a resident of the county of Ross, and State of Ohio, doth hereby make his complaint to you against one Patrick Duffy for this: that the said Patrick Duffy hath ever since the second day of April, 1857, and doth still, unlawfully and forcibly detain from the undersigned possession of the following premises, together with the house thereon, situate in the township of Boke's Creek, in the said county of Logan, and described as follows: Virginia military survey No. 16070. The said Patrick Duffy entered upon said premises as the tenant of the undersigned; the lease there-
for expired at the time herein first mentioned, and from
100 that time the said Patrick Duffy hath unlawfully held over his said term; on the first day of April, in the year 1857, the undersigned, by his agent, John R. Gunn, duly served upon the said

Patrick Duffy, as required by law, notice in writing to leave said premises; the undersigned asks process and restitution of said premises as above described, dated this 8th day of April, 1857.

DANIEL GREGG,
By his Attorney.

John R. Gunn plaintiff's witnesses	25
Court fees	25
Justice fees	65
Writ of restitution	25
Court fees on "	2 00

April 10th, 1857. Summons issued, returnable on the 16th, at 11 o'clock a. m.; summons returned in due time; endorsed: Served this writ by reading to the defendant; fees: service, 15 cts.; mil-age, 10 cts. April 11th, 1857.

WM. R. WATSON, *Const.*

April 16th, 1857. Plaintiff's agent, John R. Gunn, present, and the defendant, Patrick Duffy, failing to appear, and plaintiff demanded trial, whereupon trial had.

John R. Gunn, plaintiff- witness, sworn and examined by me; it is considered by me that the said plaintiff have restitution of the premises mentioned and described in his said complaint, and recover of said defendant the costs thereof, taxed at $1.15 cts.

JOHN ATKINSON, *J. P.*

April 16th, 1857. Writ of restitution issued by order of plaintiff. April 23rd, 1857. Writ of restitution returned; endorsed: Served this writ by removing Patrick Duffy from the house, and put Wm. Swissgood in possession of the same; fees: removing and restoring possession and mil-age, $2.00.

WM. R. WATSON, *Const.*

Received one dollar on the above, that I gave to Pat. Duffy to leave in peace.

WM. R. WATSON, *Const.*

Received my fees in full.

" " " " "

JOHN ATKINSON, *J. P.*
WM. R. WATSON, *Const.*

101 BOKER CREEK TOWNSHIP, } ss:
Logan County, }

Samuel McCulloch- bail for cost of suit.

DANIEL GREGG, Plaintiff, } Civil Action. Oct. 24th, 1856.
vs. } Forcible entry and detention.
EDWIN DOWNARD, Defendant. }

The said Daniel Gregg filed his complaint against Edwin Downard as follows:

That the defendant doth now, and hath ever since the 10th day of Oct., 1856, unlawfully and forcibly detained from the plaintiff the possession of the following-described lands and tenements, situate in the county of Logan and State of Ohio: A part of Verginia military survey No. 1670, as per bill filed by plaintiff October 25, '56; summons issued for defendant to appear on the 31st, at 3 o'clock p. m.; Oct. 31, '56, parties present, and, with consent of both parties, this cause stands adjourned till the 7th day of December, at 12 o'clock a. m.; Dec. 17th, 12 o'clock, plaintiff appeared according to adjournment, and defendant failing to appear it is therefore considered, after hearing the evidence, judgment be rendered on default; that the said plaintiff have restitution of the premises mentioned and described lands, to wit, situate in the county of Logan and State of Ohio—a part of Verginia military No. 16070, bounded on
102 the south by survey No. 10387 and 10388, on the east by survey No. 9988, on the north by a county road running to Rushsylvania, and on the west by survey No. 14530, and receive of said defendant costs herein taxed at $1.15 cts.

JOHN ATKINSON, *J. P.*

Constable's fees on—

Service and copy	$	25
Justice fees, satisfaction		10
Adjournment		10
Swearing one witness		05
Judgment		25
John R. Gunn, as witness		25
Issuing summons		15
Const. fees on writ of restitution	1	65
Writ of restitution		25

Justice fees paid.

Dec. 17th. Writ of restitution issued to Wm. R. Watson, const. Dec. 29th, 1856. Writ of restitution returned; endorsed: On the 25th day of December, 1856, I served this writ on the within named Edwin Downard by removing him from the possession of the premises within described, and Jessee Downard being in the house, I could not give plaintiff full possession; fees: service and return, 50 cts.; mil-age, 15 ct-.; assistance, $1.00.

WM. R. WATSON, *Const.*

Justice fees paid by plaintiff; plaintiff paid my fees.

WM. R. WATSON, *Const.*

DANIEL GREGG, Plaintiff,
vs.
JESSEE DOWNARD, Defendant. } Civil Action. Feb. 7th, 1857.

To John Atkinson, a justice of the peace in and for the township of Boke's Creek, in the county of Logan and State of Ohio:

The undersigned, Daniel Gregg, of Ross county and State of Ohio, doth hereby make his complaint to you against Jessee Downard for this that the said Jessee Downard did, on or about the 17th day of

December, 1856, unlawfully and forcibly and with a strong hand enter, and hath ever since, and doth still unlawfully and forcibly and with a strong hand detain from the possession of the undersigned the following premises situate on the township of Boke's Creek, in the county of Logan and State of Ohio, to wit: A part of Verginia military survey No. 16070, bounded on the west by survey
103 No. 14530, on south by survey No. 10387 and 10388, on the east by survey No. 9958, and on the north by a road leading toward Rushsylvania, being all of said survey No. 16070, which lies south of said road and the dwelling-house thereon. The undersigned at the time of said entry and ever since hath had the right of possession of said premises. On the 3rd day of February, 1857, the undersigned served upon the said Jessee Downard, as required by law, notice in writing to leave said premises. The undersigned asks possession and restitution of said premises, this 7th day of February, 1857, as per bill filed.

DANIEL GREGG,
By E. STILLINGS, *His Att'y.*

Whereupon summons issued for defendant, returnable on the 12th at 11 o'clock a. m. Feb. 12th, summons returned, endorsed: Served this writ on the 7th by copy left with his daughter. Fees, 40 cts. Wm. R. Watson, const. Feb. 12th, parties present, and defendant not ready for trial for want of the deposition of Allen Lathern, Eleasor P. Kendrick, Cadwalader Wallace: also defendant demanded a jury, whereupon this cause is adjourned till 23rd at 11 o'clock a. m. Whereupon service issued for jury, Joal McGee, Wm. Riley, Joseph B. Roberts, Cyrus Bell, Thomas Bell, Vincent Reams; ret. 23; also subpœna issued for plaintiff's witnesses and defendant's witnesses. Feb 23, venire returned indorsed: Served this writ by reading and copy. Fees: service, 65; milage, 75. Feb. 14th, 1857, Wm. R. Watson, const.; also subpœna returned in due time endorsed: Served this writ by reading, Feb. 19th, '57. Fees: service, 60 cts.; milage, 20 cts. Wm. R. Watson, const. Feb. 23rd, 1857, parties present and ready for trial. Trial had. Jury sworn: Joseph B. Roberts, Wm. Riley, Cyrus Bell, Thomas Bell, Joab McGee, Vincent Reames,
104 talesman in lieu of Charles Winner, sick; impanelled. Plaintiff witness-s sworn, Wm. Swissgood, Pat. Duffy, and examined; also defendant's witnesses sworn, Edward Downard, Steph. Downard, and examined. Jury's verdict: We, the jury, do find that the defendant is guilty in manner and form as the plaintiff hath in his complaint set forth, and that the same and the matters therein stated are true. J. B. Roberts, foreman. It is, therefore, considered by me that the said plaintiff have restitution of the premises mentioned and described in his said complaint, and recover of said defendant the costs herein taxed at ten dollars and ninety cents.

JOHN ATKINSON, *J. P.*

Writ of restitution issued and delivered to Wm. R. Watson, const., Feb. 23d, 1857.

M'ch 2nd, 1857, writ of restitution returned indorsed: Received

this writ Feb. 23d, '57, and on the 25th day of Feb., 1857, I served the same on the within named Jessee Downard by removing him from the possession of the premises within described and placing said premises in the possession and care and control of Daniel Gregg, the plaintiff within named. No property found whereon to levy to make the costs of this action.

Service and return 25; mileage 10 cts.; for removing defendant $1.65.

WM. R. WATSON, *Constable.*

Const. fees	$3 45
Justice "	1 20
Jury "	3 00
Plaintiff witness fees:	
Wm. Swissgood, pd.	50
Pat Duffy, "	50
Defendant witnesses:	
Edward Downard	50
Stephen "	50
Levi Grubbs	$1 25
	$10 90
Defendants' cost	$3 00

Received my fees in full.

JOHN ADKINSON, *J. P.*

Rec'd my fees.

WM. R. WATSON, *Const.*

I also received P. Duffy's fees.

Jury: J. B. Roberts, Joal McGee, Wm. Riley, Cyrus Bell, Thomas Bell.

Parties agree on Vincent Reams, talesman, in place of Chas. Winner. He failed to attend. Sick.

105 THE STATE OF OHIO, } ss:
Logan County, }

I, William Callahan, a justice of the peace within and for the township of Boke's Creek, in said county of Logan, do hereby certify that I am the successor in office to John Atkinson, late a justice of the peace within and for said township and county, who is now deceased, and that the official docket and records of the said John Atkinson as such justice are now in my possession as his successor in office. I further certify that the foregoing copy and transcript in the case entitled Daniel Gregg, pl'tf, *vs.* Patrick Duffy, defendant, that the foregoing copy and transcript in the cause entitled Daniel Gregg, pl'tf, *vs.* Edwin Downard, defendant, and the foregoing copy and transcript in the cause entitled Daniel Gregg, plaintiff, *vs.* Jessee Downard, defendant, are severally truly copied and correctly taken

and transcribed from the official docket of said John Atkinson, as such justice of the peace, now in my possession officially as his successor.

In testimony whereof I have hereunto subscribed my name and affixed my official seal, as such justice of the peace, this 28th day of March, in the year one thousand eight hundred and eighty-one.

[SEAL.] WM. CALLAHAN, *J. P.*

THE STATE OF OHIO, } ss:
Logan County, }

I, George H. Allen, clerk of the court of common pleas of said Logan county, do hereby certify that John Atkinson, now deceased, was living — the years 1856 and 1857, a justice of the peace
106 within and for Boke's Creek township, in said county, duly commissioned and qualified as such; that Wm. Callahan is now a justice of the peace within and for said township and county, duly commissioned, qualified, and acting as such; that he is successor to the said John Adkinson in the said office of justice of the peace; that the official signature of the said William Callahan subscribed officially as such justice of the peace to the foregoing certificate annexed to the above transcripts is true and genuine, and that full faith and credit are due to the said certificate and all other his official — as such justice of the peace.

In testimony whereof, I have hereunto officially subscribed my name and affixed the seal of said court, this 28th day of March, 1881.

[SEAL.] GEO. H. ALLEN,
Clerk of Court, Logan County Common Pleas.

Filed June 7, 1881.

Copy of Final Record in Daniel Gregg vs. Jesse Downard.

DANIEL GREGG } Appeal.
vs.
JESSE DOWNARD. }

Pleas before the court of common pleas within and for the county of Logan, and State of Ohio, begun and held at the court-house, at Bellefontaine, in said county, on the 4th day of Jan., in the year our Lord one thousand eight hundred and sixty.

107 Be it remembered, that heretofore, to wit, on the 15th day of January, A. D. 1857, the defendant, by his attorneys, West & Walker, filed in the office of the clerk of the court of common pleas of Logan county transcript, which was in the words and figures following, to wit:

Transcript.

DANIEL GREGG } Civil Action, Oct. 13, 1856.
vs.
JESSE DOWNARD. }

The plaintiff says that on the 1st day of Oct., 1856, that the defendant, Jesse Downard, hath cut and destroyed timber on

his land, part of Verginia military survey No. 16070, to the amount of $99.00, as per bill filed; Oct. 11 sum's issued and delivered to Wm. R. Watson, const., returnable on the 24th at 11 o'clock a. m.; also sup. issued for plaintiff wit., returnable same time; summons and sup. returned in due time indorsed: Served this writ by reading to the defendant; also sup. indorsed: Served by reading Oct. 17, 1856. W. R. Watson, const. Oct. 24, '56, 11 o'clock a. m., parties present, and defendant makes oath that he cannot go into trial for the want of a material witness out of the county. Whereupon this cause is adjourned until the 31st, at 11 o'clock a. m. Oct. 31st, 1856, parties present, and the defendant makes oath that he could not get ready for trial till the 17th day of December, 1856, for the want of some witness, at 11 o'clock a. m. Whereupon this cause stands adjourned till that time. Dec. 17th, 1856, 11 o'clock a. m., plaintiff appeared according to agreement, and defendant failing to appear according to agreement, plaintiff demanded trial. Trial had; and, after hearing the evidence on the above cause, it is considered by me that the plaintiff recover of the defendant the sum of 12 dollars damages and costs of suit, taxed at 86.75 cts. on the above-described premises, part of Verginia military survey No. 16070, belonging to Daniel Gregg, John Atkinson, J. P. Bond, Daniel Gregg *vs.* Jessee Downard. Judgment before John Atkinson, J. P.

Bond.

Whereas on the 17th day of December, 1856, the said Daniel Gregg obtained a judgment against the said Jessee Downard on the docket of the said John Atkinson, J. P., for
108 the sum of 12 dollars and costs, taxed at $6.75, and the said Jessee Downard intends to appeal therefrom to the court of common pleas of Logan county: Now, therefore, I, William Callahan, of said county, do hereby pursuant to the statute in such case made and provided, promise and undertake that the said appellant, if judgment be adjudged against him on the appeal, will satisfy such judgment and costs not exceeding $75. And I do also undertake in said last mentioned sum that the appellant will prosecute his appeal to effect, and without unnecessary delay.

JESSEE DOWNARD.
WM. CALLAHAN.

Executed and acknowledged before me, and surety approved, this 26th day of December, 1856.

JOHN ATKINSON,
J. P., State of Ohio, Logan County, Boke's Creek Township.

I hereby certify that the foregoing is a true copy from my docket of the proceedings had by and before me in the above cause. In testimony whereof, I have hereunto set my hand, the 26th day of December, 1856.

JOHN ATKINSON,
Justice of the Peace of the Township and County aforesaid.

And afterwards, at the March term, A. D. 1857, the plaintiff by his attorney, E. Stettings, filed his petition, which reads in the words and figures following:

Petition.

The plaintiff, Daniel Gregg, says that about the 1st day of October, A. D. 1856, the defendant, Jessee Downard, with force entered upon the premises of the plaintiff, situate in the county of Logan, and State of Ohio, to wit: Entry and survey No. 16070, in the Virginia military district, and then and there, and at sundry times from that day to the day of the commencement of this action, cut down and used for his own — a large amount of beech, walnut, oak, and hickory timber trees, and other tresspass did, to the damage
109 of the plaintiff of $99.00 *dollars*. The plaintiff, therefore, asks judgment against the defendant for said sum of $99.00.

By E. STILLINGS,
His Attorney.

STATE OF OHIO, }
Hardin County, } *ss:*

E. STILLINGS, being sworn, says he is the attorney for the plaintiff in this action; that the reason this affi*ant* is not made by the plaintiff that plaintiff is non-resident of and is absent from Logan and Hardin counties aforesaid, and that said Stillings believes the statements in the foregoing petition to be true.

E. STILLINGS.

Sworn to before me, and subscribed in my presence by the said E. Stillings, the 2nd day of May, 1857.

W. W. NIXON,
Clerk, Hardin, Com. Pleas.

Co'd.

And afterwards at the May term, A. D. 1857, of said court, this cause was continued with leave to answer in forty days. And afterwards, to wit, at the October term, A. D. 1857, of said court, this cause was continued. And afterwards, to wit, at the April and June terms, A. D. 1858, of said court, this cause was continued.

And afterwards, to wit, at the November term, A. D. 1878, of said court, journal entry was made in this cause as follows, to wit:

J'l E'ty.

Continued with leave to file answer, which is done.

And afterwards, on the 9th day of Nov., A. D. 1858, answer of defendant, Jessee Downard, was filed, as follows, to wit:

Answer.

1st. The defendant, answering, denies that the plaintiff is the owner, or hath any title to said premises or any part thereof.

2nd. For a further answer defendant says he was and for a long time had been in possession of said premises, prior to the commencement of this suit; that the plaintiff has no just and legal title to said premises; that plaintiff has and holds a pretended patent from the United States for said premises; but defendant says that said patent is fraudulently procured by the plaintiff, on a pretended
110 fraudulent and void survey and entry, both the entry and survey being fraudulently procured and made after the first day of January, 1853, of all which the plaintiff had full notice and knowledge at the time and before the issuing of said patent.

3d. For a third defense the defendant says that the plaintiff holds a pretended patent for said premises, which patent was at the time of issuing thereof void; that said patent issued on a pretended entry and survey on said premises, the said premises having been previously appropriated, located, and entered under a former entry and survey made in the name of Archibald Gordon; that the plaintiff fraudulently and without authority procured the words "Withdrawn" to be written on said Gordon's entry and survey, and afterwards fraudulently procured a pretended entry and survey of the same premises to be made after the first day of January, 1853, and patent to issue thereon, (all of which plaintiff at the time said patent issued had full knowledge.)

4th. For a further defense the defendant says that at the time said suit was commenced one James Leister was the owner of said premises by virtue of a judicial proceeding had in this court on the statutes of escheat, that this defendant was holding possession of said premises subject to said Leister's title, and under him. This defendant asks that the plaintiff's said pretended and fraudulent patent be set aside, cancelled, and held for naught; that the title of the said Leister and this defendant's possession under him be confirmed and quieted, and that defendant recover costs.

WALKER AND WEST,
Atty's for Defendant.

LOGAN COUNTY:

Jesse Downard, being sworn, says he believes *that* the statements of the foregoing answer to be true.

JESSEE DOWNARD.

Sworn to and subscribed by said Jessee Downard before me
111 and in my presence, this 9th November, 1858.

JAMES LEISTER,
Clerk L. C. P.

Co'd.

And afterwards, at the March term, A. D. 1859, of said court this cause was continued with leave to file amended answer.

Leave to File Answer.

And afterwards, to wit, on the 12th day of July, A. D. 1859, defendant, by his counsel, filed amended answer, which reads as follows:

Answer.

1st. Defendant, for answer to the plaintiff's petition, as a first ground of defense, denies that the plaintiff is the owner of said premises, or that he has any valid title thereto, or to any part thereof.

2nd. For a second ground of defense the defendant says that at and before the commencement of this suit he was and had been for a long time in possession and occupancy of said premises; that plaintiff did not then, and does not now, hold or have any just, valid, or legal title to said premises, or to any part thereof; that the plaintiff pretends to have and hold title to said premises under and by virtue of a certain pretended patent which the plaintiff, on or about the 20th day of November, 1855, fraudulently procured to be issued to him by the United States upon a fraudulent and pretended entry No. 16070, which plaintiff fraudulently and without authority of law caused and procured to be entered upon the record books in the office of the surveyor for the Virginia military district, in the State of Ohio, purporting to have date on the 20th day of Dec., A. D. 1851. The defendant says that the said pretended entry No. 16070 was procured to be made and entered upon said books long subsequent to the 20th day of December, A. D. 1851, and subsequent to the 1st day of January, 1852, and subsequent to the 1st day of January, 1853, to wit, in the year 1855. That said entry purports to have been made on military exchange warrant No. 442, after sundry pretended assignments thereof by and between one Caldwallader Wallace, Andrew D. Kendrick, Eleazer P. Kendrick, and the said Daniel
112 Gregg during the latter part of the year 1851. This defendant says that neither the said warrant No. 442, nor any part thereof, was ever legally located on said lands, or any part thereof, nor was the said warrant, or any part thereof, ever in any manner located upon said lands prior to the first day of January, 1862, or prior to the first day of January, 1853, and that said pretended entry and location No. 16070 was illegally and fraudulently procured to be made and entered after the 1st of Jan., 1852, and after the first of January, 1853, of all which the plaintiff, at the time of the making of said fraudulent and pretended entry, had full knowledge and notice. Whereupon defendant says that the said pretended entry and survey No. 16070, and the said pretended patent issued thereon, are fraudulent and void and of no validity whatever, and that plaintiff acquired no rights or title under the same and has no title by virtue thereof to the said premises, or any part thereof.

3rd. For a further ground of defense the defendant says that in the year A. D. 1823 the said premises and lands in the petition described were duly entered and surveyed on Virginia military land warrant No. 6508, in the name of Archibald Gordon, for military service on the Continental establishment in the war of the Revolu-

tion, and that the same contains more than 200 acres. That at and prior to the commencement of this suit all the rights, title, interest, and estate which the said Archibald Gordon acquired under and by virtue of said entry, location, and survey had passed to and become vested in one James Leister; that the defendant was then, and for a long time had been, in the actual and notorious possession and occupancy of said premises under the said James Leister, as tenant to him, and holding said premises adversely to all others.

113

Defendant says that as the tenant of the said James Leister he had good right to have, hold, and continue the possession and occupancy of said premises, and to have and demand that said possession and occupancy be quieted in him as such tenant against all claim, title, estate, and interest of the plaintiff in the said premises, and to have and demand the plaintiff to be barred and enjoined from setting up and asserting any title or claim to said premises as against this defendant or his landlord aforesaid, and to demand and have the decree and judgment of this court compelling, ordering, and adjudging the said plaintiff to release and convey all the claim, right, title, interest, and estate, both legal and equitable, which the plaintiff has in said premises, to the said James Leister, the landlord of this defendant, that the possession, enjoyment, and occupancy of this defendant aforesaid may be quieted. The defendant further say that plaintiff has no valid or sufficient title to said premises, or any part thereof, and did not at the commencement of this suit, nor before, nor since then, have any valid title thereto, or to any part thereof. The *defendant* pretends to have and hold title to said premises under and by virtue of a certain pretended patent which, on or about the 20th day of November, A. D. 1855, the plaintiff fraudulently, and without any equitable right or authority of law, procured to be issued to him by the United States upon a certain fraudulent, spurious, and pretended entry No. 16070, which he fraudulently and without any right or authority of law procured to be entered upon the records of entry in the office of the surveyor for the

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Virginia military district in the State of Ohio, and to be falsely dated so as to bear date about the 20th day of December, A. D. 1851; whereas the defendant says that said spurious and pretended entry was not made in the year 1851, but was falsely and fraudulently procured to be made and entered upon said records long after the first day of January, 1852, to wit, in the year 1855, and to be ante-dated so as to appear upon said books to have been made prior to the 1st day of January, 1852; of all which matters and things the said plaintiff, at the time the said spurious and fraudulent entry was procured to be made, and of the fact that said pretended entry and survey No. 16070 contained more than two hundred acres, had full knowledge and notice, and was then and there instrumental in procuring the same to be done. Said spurious and fraudulent entry No. 16070 purports to have been made upon military exchange warrant No. 442 after sundry assignments and reassignments of the same between Cadwalader Wallace, Andrew D. Kendrick, Eleazer P. Kendrick, and plaintiff, Daniel Gregg, in the latter part of the year 1851. But this defendant says no part of the said

warrant No. 442 was ever located or entered upon said premises, or any part thereof, prior to the 1st day of January, 1852, or prior to the 1st day of January, 1853; nor was said warrant No. 442 ever at any time located upon said premises, and the pretended record of such entry and location is fraudulent and void; of all which plaintiff had full knowledge and notice at the time of the issuing of said patent and at the time the said fraudulent entry was procured to be made on said books. Wherefore, and for the foregoing reasons, *plaintiff*
115 avers that said pretended entry and survey No. 16070, and the pretended patent issued thereon to plaintiff, are, and each one is, fraudulent, null- and void, and confers on plaintiff no title to said premises whatever. Wherefore defendant prays that the said James Leister may be made a party to this action; that the said pretended entry and survey No. 16070 may be adjudged and decreed to be false, fraudulent, null- and void, and that the said patent under which plaintiff pretends to claim title to said premises may be in like manner adjudged to be fraudulent and void, and that the same be cancelled, and that the title of the said James Leister in and to said premises be quieted in him, and that the possession of this defendant as his tenant be also quited; or, if said patent be not so declared null- and void, that plaintiff be decreed a trustee of said Leister, holding title to said premises in trust for him, and that plaintiff be ordered and decreed to release and convey said premises, and every part thereof, to the said James Leister, and that he be forever barred, and strictly restrained and enjoined from setting up any title or claim to said premises as against said Leister or this defendant, and for other proper relief, and that plaintiff be required to answer the interrogatories annexed to and filed with this answer.

WALKER & WEST,
Att'ys for Def'ts.

LOGAN COUNTY:

The defendant, Jessee Downard, being affirmed, says he believes the statement of the foregoing amended answer to be true.

JESSE DOWNARD.

Affirmed to and subscribed before me and in my presence, by said Jessee Downard, this 12th day of July, A. D. 1859.

[SEAL.] MILTON STEEN,
Notary Public.

And the defendant here annexes to his said answer the following interrogatories, which he calls upon the plaintiff specifically and separately and fully answer in their order under oath,
116 to wit:

1st. The plaintiff will specifically state the precise time at which he first learned that the land described in the petition was subject to entry and location.

2nd. The plaintiff will state specifically from whom he obtained the information that said land was subject to entry and location.

3rd. The plaintiff will state specifically whether he did not obtain

said information from Cadwalader Wallace, Andrew D. Kendrick, and Eleazer P. Kendrick, or from some of them.

4th. The plaintiff will state specifically whether he did not first learn that said land was subject to entry and location after the first day of January, 1852.

5th. The plaintiff will specifically state whether he did not first learn from or through Cadwalader Wallace, after the first day of January, 1852, that said land was subject to entry and location.

6th. The plaintiff will specifically state whether the said pretended entry No. 16070 was not made and procured to be entered of record after the first day of January, 1852.

7th. The plaintiff will state specifically whether said entry No. 16070 was not made in the year 1855.

8th. The plaintiff will state specifically whether said entry No. 16070 was not made after the 1st day of January, 1852, and antedated.

9th. The plaintiff will specifically state whether said survey and entry No. 16070 does not purport to cover the same land covered by and included within the boundaries of entry and survey No. 12017 for 200 acres in the name of Archibald Gordon.

10th. The plaintiff will state specifically whether he did not know, at the time of making said pretended entry and survey No. 16070, that the same contained 200 acres, instead of 100 acres, as therein stated.

117 11th. The plaintiff will specifically state whether, at the time of making said pretended entry and survey No. 16070, he had not been informed or told that the said land had previously been entered and surveyed on another warrant for another person.

12th. The plaintiff will state specifically by whom the words "Withdrawn," "State line" were written upon the record of said entry and survey No. 12017 in the name of Archibald Gordon.

13th. The plaintiff will state specifically—"Withdrawn, State line" were procured to be written upon the record of said entry and survey No. 12017.

14th. The plaintiff will state whether he did not procure said words "Withdrawn, State line" to be written upon the record of said entry and survey No. 12017.

15th. The plaintiff will state specifically the time at which he first learned that the words "Withdrawn, State line" were written upon said entry and survey No. 12017.

The plaintiff will state specifically whether said words "Withdrawn, State line" were not written upon said entry and survey No. 12017 after the first day of January, 1852.

17th. The plaintiff will state whether the description in said pretended survey No. 16070 was not taken from the record of said survey No. 12017.

18th. The plaintiff will specifically state whether Nathaniel Massie, by whom said pretended survey No. 16070 purports to have been made, was, at the date thereof, or at any other time, on said premises, and whether the same was made by him.

19th. The plaintiff will specifically state when and in whose pos-

session said military warrant No. 6508 now is and has been for the last seven years, and every part thereof.

20th. Whether the plaintiff has not seen said warrant No. 6508; whether it is not now in the office of the surveyor for the Virginia military district, and whether he does not know that
118 said pretended withdrawal of said warrant was fraudulent.

And afterwards, on the 7th day of October of the October term, A. D. 1859, of said court journal entry was made in this cause as follows:

Jl Ett'y.

On motion of defendant's counsel, and it appearing that James Leister is a necessary —, it is ordered and adjudged that said James Leister be made a party defendant and that he file answer instanter.

And afterwards, to wit, on the 17th day of October, A. D. 1859, answer of James Leister was filed in this cause, as follows:

Answer of Leister.

The said James Leister by leave, being first made a party defendant by order of this court, comes and files his answer and says that at a certain sale made by the auditor of Logan county in a certain judicial proceeding to sell the lands in the petition described as escheated lands, in pursuance of the statute in such case made and provided, he became the purchaser of said premises and received a conveyance therefor in pursuance of said sale and proceeding, dated the 26th day of August, 1856, ever since which time he has been and now is the owner in fee of said premises, and is entitled to demand and have the title and possession thereof quieted in him as against plaintiff and all others.

This defendant says that the plaintiff pretends to have some title to said premises under and virtue of a certain spurious and pretended patent fraudulently procured by him to be issued from the Government of the United States on the 20th day of November, 1855, on a certain fraudulent and void entry and survey numbered 16070 for 100 acres, all of which the said plaintiff well knew to be fraudulent and void, the particulars of which are fully set forth in the amended answer of the said Jessee Downard, his co-defendant, heretofore filed in this case, and which this defendant herein
119 and hereby adopts as fully as if the same were herein set forth fully and at large. This defendant therefore prays that the said pretended and fraudulent patent, entry, and survey No. 16070 be declared fraudulent and void; that the same, and record thereof, be cancelled; that the plaintiff be restrained and perpetually enjoined from setting up or asserting any title or claim to said premises under said fraudulent patent, entry, and survey, or either of them, and that this defendant's title and possession to said premises be quieted in him, and for other proper relief.

WALKER AND WEST,
Att'ys for Deft.

STATE OF OHIO, } ss:
Logan County, }

James Leister, being duly sworn, says he believes the statements of the foregoing answer to be true.

JAS. LEISTER.

Sworn to by said James Leister before me, and by him subscribed in my presence, this 17th day of October, 1879.

[SEAL.] WILLIAM NEWELL,
Notary Public, Lo. Co., O.

And afterwards, to wit, on 19th day of October, A. D. 1859, motion to strike answer from files was filed in this case, to wit:

Motion.

The plaintiff moves the court to strike from the files the answer of James Leister, and all the answer of Jessee Downard after the denial of the title of the plaintiff and the possession of the plaintiff, because said answer of said Leister is no answer or defense to plaintiff's action, and is no way competent to be set up in this action against the plaintiff; and said answer of said defendant Downard, except the denials above stated, is incompent, unless it be as evidence in the case.

By E. & J. STELLINGS, *Att'ys.*

And afterwards, to wit, on the 6th day of December of the October term, A. D. 1879, of said court, journal entry was made in this cause as follows, to wit:

"This cause came on to be heard upon the plaintiff's mo-
120 tion to strike the answer from the files, which being heard, and the court being fully advised in the premises, the same is overruled at the plaintiff's costs. It is therefore considered that the defendant recover of the plaintiff the costs of this term to be taxed. Leave to file reply in 40 days and continued.

And afterwards, on the 2nd day of January, A. D. 1860, reply was filed in this case, as follows:

Reply.

The plaintiff, for reply to the answer of the defendant-, Jessee Downard and James Leister, says that he has and holds the patent for the said lands in controversy in said case, being military survey No. 16070, issued to this plaintiff by the United States on the 20th day of November, 1855; that said patent was issued upon exchange warrant No. 442, on entry and survey No. 16070, recorded in the office of the principal surveyor for the Virginia military land district of Ohio, which entry bears date the 20th day of November, 1851, and which survey bears date ———.

The plaintiff admits that the said patent, entry, and survey cover the same lands originally covered by the said entry and survey No.

12017, but says there is entered upon said last-named entry and survey upon the record thereof in said office a withdrawal of both said entry and survey.

Plaintiff asks that his said title to said premises be quieted as against said defendants, and that they and each of them be enjoined perpetually from disturbing his title to or possession of said lands.

E. STILLINGS,
Att'y for Pltfs.

LOGAN COUNTY:

Daniel Gregg, being sworn, says he believes the statements of the foregoing reply to be true.

DANIEL GREGG.

Sworn to and subscribed before me, and in my presence, by the said Daniel Gregg, this 2nd day of January, 1860.

R. F. JOHNSTON, *J. P.*

121 And afterwards, now at this time, on the day and year first above written, final entry was made in this case, as follows, to wit:

Final Entry.

DANIEL GREGG } Petition.
vs.
JESSEE DOWNARD. }

This day come the parties and submit this cause to the court, neither party requiring a jury, and, the court being fully advised, finds the answer of defendants not sustained, and that the plaintiff has and holds a patent for said premises issued to him by the United States, and that the same is sufficient in law. It is therefore adjudged, considered, and decreed by the court that the said plaintiff be quieted in his title to and possession of said premises, and that the defendants, and each of them, be restrained and perpetually enjoined from setting up or asserting any claim to said premises as against the plaintiff, or his assigns, and from disturbing the plaintiff's title to or possession of the same. The court further finds that the said defendant, Jessee Downard, was and is guilty of the trespass charged against him.

It is therefore considered that the plaintiff do recover of the defendant, Jessee Downard, the sum of ten cents, his damages sustained by reason of his trespass aforesaid, and that each party pay his own costs.

THE STATE OF OHIO, } *ss:*
Logan County, }

I, Geo. H. Allen, clerk of the court of common pleas of Logan county, hereby certify that the foregoing is a true and correct copy of the final record of the foregoing entitled case, as taken from the records of said court.

Witness my signature and seal of said court, this 2nd day of June, A. D. 1881.

GEO. H. ALLEN, *Clerk*,
By W. H. MARTIN, *Dep't.*

Bellefontaine, June 2nd, 1881.

122 And afterwards, on the 14th of July, A. D. 1881, the following papers were filed in this cause in this court: Copies of surveys 9958, 10239, 10387, 10388; entry 12017 and survey; survey 13593, 14530, with entry No. 143; application of Gordon for pension, and also for bounty land; Gregg's application for patents, &c.

Power of Attorney.

Known all men by these presents, that I, Archibald Gordon, of the county of Cecil and State of Maryland, shoemaker, for divers considerations and good causes me hereunto moving, have made, ordained, constituted, and by these presence do make, ordain, constitute, and appoint my trusty friend Robert McKim, of the city of Richmod, gentleman, my true and lawful attorney, for me in my name and to my use to ask or receive of and from the acting and proper officers in the land office in the city of Richmond such bounty-lands warrant as may be issued in my name, and upon the receipts of the same, acquita-ces and other sufficient discharges for me and in my name to make, sign, seal, and deliver, as also one or more attorney or attorneys under him to substitute or appoint; and again, at his pleasure, to make, and further to do, perform, and execute for me and in my name all and singular thing or things which shall or may be necessary touching and concerning the premises as fully, thoroughly, and entirely as I, the said Archibald Gordon, in my own person ought or could do in and about the same, testifying, allowing, and confirming whatsoever my said attorney shall lawfully do or cause to be done in and about the execution of the premises by virtue of these presents.

In witness whereof, I have hereunto set my hand and seal, this 25th day of July, anno Domini *in the year of our Lord* one thousand eight hundred and twenty-one.

his
ARCHIBALD x GORDON.
mark.

123 Witness present—
JOSIAH ALEXANDER.
JOHN BENNETT.

Personally appeared Archibald Gordon before me, Adam Wham, notary public for the State of Maryland, duly commissioned and duly qualified, residing in the town of Elkton, in the State aforesaid, and acknowledged the within instrument of writing to be his act and deed.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal, this 30th day of July, 1821.

[SEAL] ADAM WHAM,
Notary Public.

I, William P. M. Kellam, register of the Virginia land office, do certify that the foregoing writing is a true copy of a paper filed in the land bounty case of Archibald Gordon.

Given under my hand and seal of office at Richmond, this the 7th day of October, A. D. 1871.

[SEAL.] WILLIAM P. M. KELLAM, *Reg. L. O.*

IN COUNCIL, *Oct. 24th*, 1821.

It is advised that Archibald Gordon be allowed land bounty, as a private in the Continental line, for service during the war.

TH. M. RANDOLPH.

Attest: J. W. PLEASANTS.

I, William P. M. Kellam, register of the Virginia land office, do certify that the foregoing is a true copy of an allowance for bounty land made by the executive of Virginia to Archibald Gordon for service during the war in the Continental line; I do further certify that warrant No. 6508, for two hundred acres issued from
124 the land office of Virginia to said Archibald Gordon, in satisfaction of the allowance of which the above is a copy.

Given under my hand and seal of office at Richmond, this the 7th day of October, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.] WILLIAM P. M. KELLAM,
Reg. V. L. Office.

19 July, 1822: Received of the register of the land office a warrant of 200 acres, No. 6508, issued this day to Archibald Gordon.

ROBERT McKIM.

Attest: THOS. MILLER.

I certify that the foregoing is a true copy of the receipts given to the register of the land office (for warrant No. 6508 issued for the services of Archibald Gordon), by *Rojer* McKim, attorney-in-fact for said Gordon. Given under my hand and seal of office at Richmond, this 7th day of Oct., A. D. 1871.

[SEAL.] WILLIAM P. M. KELLAM, *Ry L. O.*

Entry.

JANUARY 1st, 1823.

12017. Archibald Gordon enters 200 acres of land on a military warrant No. 6508, on the waters of Rush creek, beginning at the northeast corner of Robert Gran's entry No. 10947; thence to his southeast corner; thence to the northeast corner of Aikens' entry No. 10388; thence to the northwest corner of their entry No. 10387; thence to the northeast corner of said entry in the line of Parker's survey No. 9958; thence N. 12 W. for quantity.

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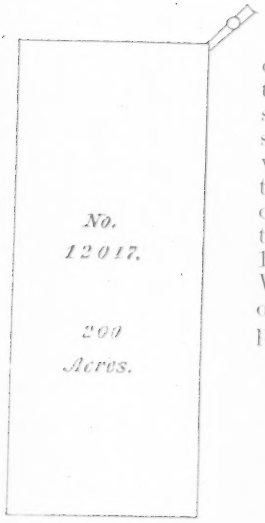
Survey.



Surveyed for Archibald Gordon 200 acres of land on a military warrant No. 5508, on the waters of Rush creek, beginning at a stake northwest corner to Alexander Parker's survey No. 9958, in the line of Sawyir's survey No. 10239; thence South 12 E. 246 poles to two beech [trees], in the line of Parker, corner to Aikins' survey No. 10387 and 10388; thence with a line of said survey S. 78 W. 134 poles to an ash and beech; thence N. 12 W. 246 poles to a hickory & elm, in the line of Sawyir's said survey; thence N. 78 E. 154 poles to the beginning.

THOS. J. McARTHUR, *D. S.*

March 25, 1823. Nov. 5, 1824.

LEVI D. THORP, }
HEKIAH ROSEBURY, } *C. C.*
WILSON THOMPSON, *M'k'r.*

OFFICE OF AUDITOR OF STATE,
COLUMBUS, OHIO, *May 20th*, 1881.

I, John F. Ogleree, auditor of the State of Ohio, do hereby certify that the above entry and survey are true and correct copies from the record of this office.

Given under my hand and official seal at the time and place above mentioned.

JOHN F. OGLEREE,
Auditor of State.

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EXHIBIT B.

17a svd., 197 F; 100a svd., 243 F.

1851, October 4th.

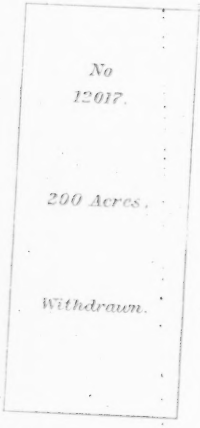
No. 16070. Daniel Gregg, ass'ee, entry 130 acres of land on part of a military warrant (exchange) No. 442 on the waters of Scioto river, to include the vacant land between surveys No. 9993, No. 9977, No. 9994, No. 9978, No. 9958, and No. 14530.

EXHIBIT A.

(139 D.) Withdrawn.

1823, January 1st.

No. 12017. Archibald Gordon enters 200 acres of land on a military warrant No. 6508 on the waters of Rush creek, beginning at the northeast corner of Robert Green's entry No. 10947, thence to his southeast corner, thence to the northeast corner of Aikin's entry No. 10388, thence to the northwest corner of their entry No. 10387, thence to the northeast corner of said entry in the line of Parker's survey No. 9958, thence N. 12 W. for quantity.



Surveyed for Archibald Gordon 200 acres of land on a military warrant No. 6508 on the waters of Rush creek, beginning at a stake, northwest corner, to Alexander Parker's survey No. 9958, in the line of Sawyer's survey No. 10239, thence S. 12 E. 246 poles to two beech in the line of Parker corner, to Aiken's survey No. 10387 and 10388, thence with a line of said survey S. 78 W. 134 poles to an ash and beech, thence N. 12 W. 246 poles to a hickory and elm in the line of Sawyer's said survey, thence N. 78 E. 134 poles to the beginning.

THOS. J. W. ARTHUR, *D. S.*
M'ch 29, 1823; Nov. 6, 1824.

LEVI D. THORP,
HEEKIAH ROSEBURG, } *C. C.*
WILSON THOMPSON, *M'r.*

127 SURVEYOR'S OFFICE, VIRGINIA MILITARY DISTRICT,
WITHIN THE STATE OF OHIO.

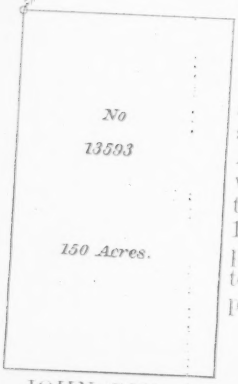
I, Eleazer P. Kendrick, principal surveyor of said district, do certify that the above entries No. 16070 and No. 12017 and survey No. 12017 are true copies from the records of this office.

Given under my hand and seal of office, at Chillicothe, this 27th day of October, 1871, and the 96th year of the Independence of the United States.

[SEAL.]

Fees, $2.00.

E. P. KENDRICK.



Surveyed for Cadwallader Wallace, ass'ee, 150 acres of land on part of a military warrant No. 5052 on the waters of Rush creek, beginning at an ash and two beeches, northeast corner, to the representatives of James Higgins' survey No. 10837, thence S. 12 E. 240 poles to a stake in the line of the representatives of David Aikin's survey No. 10387 and 10388, thence with said line N. 78 E. 100 poles to a stake in the line of Archibald Gordon's survey No. 12017, thence with the said line N. 12 W. 240 poles to a hickory and elm, northwest corner, to Gordon's said survey, thence S. 78 W. 100 poles to the beginning.

CADWALLADER WALLACE, *D. S.*
Oct. 30th, 1834; Nov. 5th, 1834.

JOHN COX,
PETER FUNK, } *C. C.*
GEORGE JENKINS, *M'r.*

SURVEYOR'S OFFICE, VA. MILITARY DISTRICT.

I, Eleazer P. Kendrick, principal surveyor of said district, do hereby certify that the foregoing survey, viz: No. 13593 for 150 acres, is a true copy of the records of this office.

128 Given under my hand and seal of office, at Chillicothe, Ohio, this 3rd day of August, A. D. 1880, and the 104th year of the Independence of the United States of America.

[SEAL.] E. P. KENDRICK.

195 E.

1840, May 23rd.

No. 14530. Cadwallader Wallace, ass'ee, enters 50 acres of land on part of a military warrant No. 6713, on the waters of Rush creek, beginning at the northwest corner of survey No. 12017; thence to the southwest corner thereof; thence and from the beginning equal distances S. 78 W. for quantity.

Surveyed for Cadwallader Wallace, ass'ee, 50 acres of land on part of a military warrant No. 6713, on the waters of Rush creek, beginning at a beech and large red oak in the line of Archibald Gordon's survey No. 12017; thence with said line S. 12 E. 174 poles to two ashes, southwest corner to said survey; thence with the line of David Aikins' survey No. 16387 and 10388 S. 78 W. 24 poles to three ironwoods, a white walnut, and hackbury, corner to said survey; thence with another line thereof N. 12 W. 60 poles to two beeches and an ash, corner to said survey; thence with another line thereof S. 78 W. 5 poles to the southeast corner of said Wallace's survey No. 13593 of 150 acres; thence with the line of said survey N. 12 W. 228 poles to the northeast corner thereof; thence N. 78 E. 39 poles to a stake in a pond, northwest corner to Gordon's said survey; thence with the line thereof S. 12 E. 114 poles to the beginning.

CADWALLADER WALLACE, *D. S.*

May 25, 1840. May 26th, 1840.

WILLIAM RICHARDS, }
JOHN LENGRELL, } *C. C.*
JOHN MERKENS, *M'Fr.*

129 SURVEYORS' OFFICE, VIRGINIA MILITARY DISTRICT.

I, Eleazer P. Kendrick, principal surveyor of said district, do hereby certify that the foregoing entry and survey No. 14530 for 50 acres are true copies of the records of this office.

Given under my hand and seal of office at Chillicothe, Ohio, this 26th day of July, A. D. 1880, and the 104th year of the Independence of the United States of America.

[SEAL.] E. P. KENDRICK.

Fees, $2.00.

168 F.

Oct. 4th, 1851.

No. 16070. Daniel Gregg, assignee, enters 30 acres of land on part of a military warrant (exchanged) No. 442, on the waters of the Scioto river, to include the vacant land between surveys No. 9993, No. 9977, No. 9994, and No. 9978.

OFFICE OF THE AUDITOR of STATE, COLUMBUS, O.,
March 21st, 1872.

I hereby certify the foregoing to be correctly copied from the records of this office, viz.: From vol. "E" of record of entries, in the Virginia military district in this State.

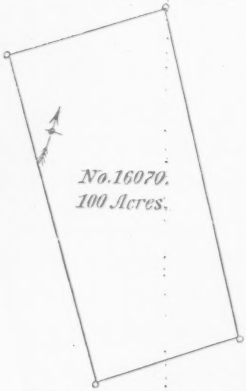
Witness my hand and official seal, this day and year above written.

[SEAL.] JAS. WILLIAMS,
Auditor of State.

130 17a S'v'd., 197 F.; 100a S'v'd., 243 F.

1851, October 4th.

No. 16070. Daniel Gregg, ass'ee, enters 130 acres of land on part of a military warrant (exchanged) No. 442, on the waters of Scioto river, to include the vacant land between surveys No. 9993, No. 9977, No. 9994, No. 9978, 9958, and No. 14530.



Surveyed for Daniel Gregg, ass'ee, 100 acres of land on part of a military warrant (exchanged) No. 442, on the waters of Rush creek, beginning at a large red oak and beech corner to Cadwallader Wallace's survey No. 14530; thence with the line thereof S. 12 E. 113 poles to an ash and beech corner to said survey, in the line of survey No. 10387 and 10388; thence with the line thereof N. 78 E. 83 poles to two beeches easterly corner to said survey, in the line of Alexander Parker's survey No. 9958; thence with the line thereof N. 12 W. 193¾ poles to a stake northwest corner to said survey, in the line of survey No. 10239; thence with the line thereof S. 78 W. 83 poles to a stake in a pond northeast corner to said survey No. 14530; thence S. 12 E. 80⅔ poles to the beginning.

NATHANIN MOSSIE, *D. S.*

Dec. 20th, 1851. Nov. 2nd, 1855.

JAMES ROSS, }
JERRY LISLE, } *C. C.*
JNO. R. GUNN, *M'r.*

SURVEYOR'S OFFICE, VIRGINIA MILITARY DISTRICT.

I, Eleazer P. Kendrick, principal surveyor of said district, do hereby certify that the foregoing entry and survey, viz., entry No.

16070 for 130 acres, and survey No. 16070 for 100 acres, are true copies of the records of this office.

Given under my hand and seal of office, at Chillicothe, O., this 26th day of July, A. D. 1880, and the 104th year of the Independence of the United States of America.

[SEAL] E. P. KENDRICK.

Fees, $2.00.

131 292 C. Entries.

JULY 19TH, 1819.

No. 9958. Alexander Parker's heirs enters 1,000 acres of land on part of a military warrant No. 735, on the waters of Rush creek, beginning 400 poles N. 78 E. from the southeast corner of Phillip Stewart's entry No. 9957; thence N. 78 E. 400 poles; thence and from the beginning N. 12 W. equal distance for quantity.

100a. withd'l. Logan; Hardin. 368 C.

APRIL 20TH, 1820.

No. 10239. Nathaniel Sawyer's ass'ee, enters 1,908⅓ acres, on part of three military warrants, 1,333⅓ acres on No. 6285, 200 acres on No. 6275, and 375 acres on No. 6327, on the waters of Scioto, beginning at the southeast corner of Robert Porterfield and others entry No. 9978; thence N. 78 E. 800 poles; thence N. 12 W., and from the beginning N. 12 W. equal distance for quantity.

360 C. Logan.

AUGUST 12TH, 1820.

No. 10387. V. The representatives of David Aiken enter 100 acres of land on a military warrant No. 6009 on Rush creek, beginning at the northeast corner of Roland Madison's entry No. 9938; thence S. 78 W. 60 poles; thence N. 12 W., and from the beginning N. 12 W. equal distance for quantity.

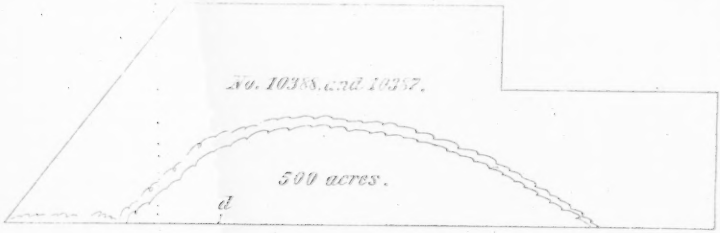
360 C. Logan.

AUGUST 12TH, 1820.

No. 10388. V. The representatives of David Aiken enter 400 acres of land on a military warrant No. 6010 on Rush creek; beginning at the southwest corner of their entry No. 10387; thence N. 12 W. 160 poles; thence S. 78 W., and from the beginning S. 78 W. so far that a line N. 40 E. will include the quantity.

132 Surveyed for the representatives of David Aikens, dec'd, 500 acres of land on two military warrants, No. 6009 and 6019, on Rush Creek; beginning at a lyn buckeye and two ironwoods northeast corner to Morrow and Taylor's survey No. 9937 and northwest corner to the representatives of Rowland Madison's survey No. 9938, thence N. 78 E. 400 poles, crossing the creek at 310 poles, to two beeches and a sugar tree, northeast corner to Madison's said survey and northwest corner to Taylor and Pierce's survey No. 10060; thence N. 12 W. 100 poles to two beeches; thence S. 78 W. 160 poles to three ironwoods, a white walnut, and hockberry; thence

N. 12 W. 60 poles to two beeches and an ash; thence So. 78 W. 300 poles to a water beech and bur oak; thence S. 40 W. 250 poles to two beeches in the line of Morrow and Taylor's said survey; thence N. 78 E. 256 poles, crossing the creek at 48, 77, 90, 103, 114, and at 127 poles to the beginning.



THOMAS J. McARTHUR, *D. S.*

Nov. 6th, 1821. Feb. 12th, 1822.

FRANCIS THOMPSON, }
DAVID McARTHUR, } *C. C.*
MATTHEW BONNER, *M'kr.*

OFFICE OF THE AUDITOR OF STATE,
COLUMBUS, OHIO, *Oct. 8th*, 1880.

I, John F. Ogleree, auditor of the State of Ohio, do hereby certify that the foregoing entries and survey are true and correct copies of the original on file in this office.

133 In witness whereof I have hereunto set my name and affixed my official seal, at the time and place above mentioned.

[SEAL.] JOHN F. OGLEREE,
Auditor of State.

Surveyed for Alexander Parker heirs 1,000 acres of land on part of a military warrant No. 735, on Rush creek, beginning at two beeches and a sugar tree northeast corner to Rowland Madison survey No. 9938; thence N. 12 W. 400 poles, crossing several small branches, to a stake; thence N. 78 E. 400 poles, crossing a small branch at 8 and one at 144 poles, to two buckeyes; thence S. 12 E. 400 poles, crossing a branch at 178 and Rush creek at 310 poles, to four beeches and a white oak; thence S. 78 W. 400 poles, crossing the creek at 101, at 118, and at 142 poles, to the beginning.

THOMAS J. McARTHUR, *D. S.*

January 26th, 1821. M'ch 30th, 1821.

SIMEON NOGER, }
ABRAHAM SAGER, } *C. C.*
ABNER CHAPMAN, *M'kr.*

134 Surveyed for Nathaniel Sawyer, ass'ee, 1,808⅓ acres of land on part of three military warrants, 1,333⅓ acres on No. 6285, 100 acres on No. 6277, and 375 acres on No. 6327, on the waters of Scioto, beginning at 3 red elms and two buckeyes northwest corner to Robert Means survey No. 9959 and northeast corner to Alexander Parker's survey No. 9958; thence N. 12 W. 363 poles to two sugar trees and ironwood in the line of David William's southwest survey No. 10176; thence S. 78 W. 800 poles, crossing a large branch at 10 poles, passing the corner of said survey at 260, crossing a large branch at 356 poles, to a buckeye and two hickories; thence S. 12 E. 363 poles, crossing branches at 121 and at 221 poles to three beeches and an ash, southeast corner to Robert Porterfield and others survey No. 9978; thence N. 78 E. 800 poles, crossing branches at 94, 170, 227, 409, 543, and at 658 poles, to the beginning.

THOMAS J. McARTHUR, *D. S.*

Nov. 15th, 1821. Feb. 21st, 1822.

FRANCIS THOMPSON, }
DAVID McARTHUR, } *C. C.*
MANTHEW BONNER, *M'Kr.*

135 OFFICE OF AUDITOR OF STATE,
COLUMBUS, OHIO, *Oct. 8th*, 1880.

I, John F. Ogleree, auditor of the State of Ohio, do hereby certify that the foregoing surveys are true and correct copies from the original on file in this office.

Witness my hand and official seal, at the time and place above mentioned.

[SEAL.] JOHN F. OGLEREE,
Auditor of State.

And aftrrwards, to wit, on the 14th day of June, A. D. 1881, the following deeds (copies of Daniel Gregg to W. H. West, W. H. West to Lucindia Leister, James M. Leister to Daniel Gregg, and Daniel Gregg to L. M. Leister) were filed in this cause in this court, being in the words and figures following to wit:

Daniel Gregg to William H. West.

Know all men that I, Daniel Gregg, of the county of Ross, in the State of Ohio, in consideration of one dollar paid by William H. West, of the county of Logan, and State aforesaid, the receipt whereof is hereby acknowledged, do hereby bargain, sell, and convey to the said William H. West, his heirs and assigns forever, the following real estate, to wit: The undivided five-eighths of survey No. 16070, in Logan county, Ohio, patented by the United States to Daniel Gregg, November 20th, 1855, together with all the privileges and appurtenances to the same belonging, to have and to hold the above to the said William H. West, his heirs and assigns for-
136 ever; and said grantor hereby covenanting, and that he will warrant and defend the same against all claim whatsoever claiming by, from, or under him, his heirs and assigns, but none others.

In witness whereof, the said Daniel Gregg has hereunto set his hand and seal, this 12th day of January, in the year eighteen hundred and sixty.

DANIEL GREGG. [SEAL.]

Signed, sealed, and delivered in presence of—
R. F. JOHNSON.
JAMES WALKER.

STATE OF OHIO, }
Logan County, } *ss:*

Be it remembered, that on this 12th day of January, in the year of our Lord one thousand eight hundred and sixty, before me, the subscriber, personally came Daniel Gregg, the grantor in the above conveyance, and acknowledged the signing and sealing thereof to be his voluntary act and deed for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto subscribed my name and affixed my seal officially, on the day and year last aforesaid.

R. F. JOHNSTON, *J. P.*

Received and recorded, Jan. 16, 1860.

WM. CHEEVER, *Rec. L. C., O.*

STATE OF OHIO, }
Logan County, } *ss:*

I, John A. Coulter, county recorder in and for said Logan county and State of Ohio, do hereby certify the foregoing to be a correct copy of deed from Daniel Gregg to Wm. H. West, as recorded and truly taken from vol. 35, page 373, Record of Deeds, Logan
137 County, Ohio.

In testimony whereof, I have hereunto set my hand and seal officially, at Bellefontaine, June 2nd, 1881.

[SEAL.] JOHN A. COULTER,
County Recorder.

William H. West to Lucinda M Leister.

Know all men by these presents, that we, William H. West, and Elizabeth West his wife, of the county of Logan, and State of Ohio, in consideration of the sum of one thousand dollars to us paid by Lucinda M. Leister, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, and convey to the said Lucinda M. Leister, her heirs and assigns forever, the following real estate, situate in the county of Logan, in the State of Ohio, and in the township of Boke's Creek, and bounded and described as follows, viz: Being the undivided five-eighth parts of military survey No. (16070) sixteen thousand and seventy:

To have and to hold said said premises, with all the privileges and appurtenances thereto belonging, to the said Lucinda M. Leister, her heirs and assigns forever.

And the said William H. West, for himself and his heirs, doth hereby covenant with the said Lucinda M. Leister, her heirs and assigns, that he is lawfully seized of the two-thirds of the said five-eighths part of the premises aforesaid; that the said two-thirds are free and clear from all incumbrances whatsoever; and that he will forever warrant and — the same two-thirds of said five-eighths, with

the appurtenances, unto the said Lucinda M. Leister, her
138 heirs and assigns, against the lawful claims of all persons whomsoever.

In witness whereof, the said William H. West and Elizabeth West, his wife, who hereby relinquishes her right of dower in the premises, hereunto set their hands and seals, this 1st day of January, in the year of our Lord one thousand eight hundred and sixty-three.

W. H. WEST. [SEAL.]
E. WEST. [SEAL.]

Executed in the presence of—
SAMUEL T. WALKER.
FANNIE PATTERSON.

STATE OF OHIO, } ss:
Logan County, }

Be it remembered, that on this 1st day of January, A. D. 1863, before me, the subscriber, a notary public in and for said county, personally came the above-named William H. West and Elizabeth West, his wife, the grantors in the above conveyance, and acknowledged the signing and sealing of the same to be their voluntary act and deed for the uses and purposes therein mentioned; and the said Elizabeth West, wife of the said Wm. H. West, being at the same time examined by me separate and apart from her said husband, and the contents of said instrument being by me made known and explained to her, then declared that she did voluntarily sign, seal, and acknowledge the same, and that she was still satisfied therewith.

In testimony whereof, I have hereunto subscribed my name and affixed my notarial seal, on this day and year last aforesaid.

[SEAL.] SAMUEL T. WALKER,
N. P., Logan Co., O.

Rec'd for record, Sept. 24, 1863.
Recorded Sept. 28th, 1863.
WM. CHEEVER, *Rec. L. C., O.*

139 STATE OF OHIO, } ss:
Logan County, }

I, John A. Coulter, county recorder in and for said Logan county and said State of Ohio, do hereby certify the foregoing writing to be a correct copy of a deed from William H. West and Elizabeth West to Lucinda M. Leister, as recorded and truly taken from vol. No. 39, at pages 398 *et* 399, record of deeds Logan county, Ohio.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Bellefontaine, June 2d, A. D. 1881.

[SEAL.] JOHN A. COULTER,
County Recorder.

James M. Leister and William H. West to Daniel Gregg.

Know all men by these presents, that we, James M. Leister and Lucindia M., his wife, and William H. West and Elizabeth, his wife, of the county of Logan, in the State of Ohio, in consideration of division of land, and one dollar to us paid by Daniel Gregg of the county of Ross and State of Ohio, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, and convey to the said Daniel Gregg, his heirs and assigns forever, the following premises situate on the waters of Panther creek, in the county of Logan and State of Ohio, bounded as follows: Beginning at a stake in the south line of survey No. 10239 and northwest corner to survey No. 9958, thence south 10¼° E. 97½ poles to a stake in the line of said survey, thence S. 79° W. 136 poles to a stake in the line of survey
140 No. 14530, thence N. 10¼° W. 97½ poles to a stake, corner to said survey in the south line of survey No. 10239; thence N. 79° E 136 poles to the beginning, containing 82 acres and a half, being part of survey No. 16070, patented by the United States to Daniel Gregg, and all the estate, title, and interest of the said James M. Leister and Lucinda M., his wife, and William H. West and Elizabeth, his wife, either in land or in equity, of, in, and to the said premises, together with all the privileges and appurtenances to the same belonging, to have and to hold the same to the only proper use of the said Daniel Gregg, his heirs and assigns forever. And the said James M. Leister and Lucinda M., his wife, for themselves, their heirs, executors, and administrators, do hereby covenant with the said Daniel Gregg, his heirs and assigns, that the title so conveyed is clear, free, and unencumbered by any act of the said James M. Leister and Lucinda M., his wife, and William H. West.

In witness whereof, the said James M. Leister and Wm. H. West, and Lucinda M. Leister, wife of said James, and Elizabeth West, wife of said William H. West, do hereby release their right and expectancy of dower in the said premises, have hereunto set their hands and seals, this 29th day of July, in the year of our Lord one thousand eight hundred and sixty-four.

JAMES LEISTER. [SEAL.]
LUCINDA LEISTER. [SEAL.]
W. H. WEST. [SEAL.]

Signed, sealed, acknowledged, and delivered in presence of us—
E. DURKER, as to West.
N. G. Johnston, as to all.
ABBY SULLIVAN, as to Mr. & Mrs. Leister.

141 STATE OF OHIO, }
Logan County, } *ss:*

Be it remembered that on the 29th day of July, in the year of our Lord one thousand eight hundred and sixty-four, before me, the subscriber, N. G. Johnston, a notary public, personally came James M. Leister and William H. West, the grantors in the foregoing deed, and acknowledged the signing and sealing thereof to be their volun-

tary act and deed, for the uses and purposes therein mentioned, and the said Lucinda Leister, wife of the said James M. Leister, being examined by me, separate and apart from her said husband, and the contents of said deed being by me made known and explained to —, as the statute directs, declared that she did voluntarily sign, seal, and acknowledge the same, and that she is still satisfied therewith as her act and deed for the uses and purposes therein mentioned.

[SEAL.] N. G. JOHNSTON,
Notary Public.

(5-ct. R. Stamp. N. G. J. July 29, 1864.)

Received and recorded July 29th, 1864.
JOHN SHUS,
Recorder.

STATE OF OHIO, *Logan County, Ohio:*

I, John A. Coulter, county recorder, of Logan county, and State of Ohio, do hereby certify the foregoing writing to be a true copy of a deed from James Leister, and Lucinda Leister, and William H. West to Daniel Gregg, as recorded and truly taken from vol. 40, at page 463, records of deeds, Logan county, Ohio.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Bellefontaine, June 2nd, 1881.

[SEAL.] JOHN A. COULTER,
County Recorder,

142 DANIEL GREGG TO LUCINDA M. LEISTER.

Known all men by these presents, that I, Daniel Gregg, of the county of Ross, in the State of Ohio, in consideration of division of land, and one dollar to me paid by Lucinda M. Leister, of Logan county, Ohio, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, and convey to the said Lucinda M. Leister, her heirs and assigns forever, the following premises situate in the county of Logan, in the State of Ohio, on the waters of Panther creek, bounded as follows: Beginning at a stake in the west line of survey No. 9958 standing 97¼ poles S. 10¼° E. from the northwest corner; thence S. 10¼° E. 198¾ poles to a stake in said line and two beeches corner to survey No. 10387 and 10388; thence S. 79 W. 136 poles to an ash in said line, corner to survey No. 14530; thence N. 10¼° W. 190 poles to a beech and large red-oak corner to said survey; thence N. 10¼ W. 8¾ poles to a stake corner to a lot this day deeded to David Gregg; thence N. 79° E. 136 poles to the beginning, containing one hundred sixty-eight acres and seven-eighths, being part of survey No. 16070, patented to Daniel Gregg, and all the estate, title, and interest of the said Daniel Gregg, either in law or in equity of, in, and to said premises; together with all the privileges and appurtenances to the same belonging; to have and to hold the same to the only proper use of the said Lucinda M. Leister, her heirs and assigns forever. And the said Daniel Gregg, for himself, his heirs, executors, and administrators, doth hereby covenant with the said Lucinda M. Leister, her heirs and assigns, that the title so conveyed

is clear, free, and unencumbered by any act of the said David Gregg.

143 In witness whereof, the said Daniel Gregg has hereunto set his hand and seal, this 29th day of July, in the year of our Lord one thousand eight hundred and sixty-four.

DANIEL GREGG. [SEAL.]

Signed, sealed, acknowledged, and delivered in presence of us—
E. DURKER.
N. G. JOHNSON.

STATE OF OHIO, }
Logan County, } *ss:*

Be it remembered that on the 29th day of July, in the year of our Lord, one thousand eight hundred and sixty-four, before me, the subscriber, a notary public in and for said county, personally came Daniel Gregg, the grantor in the foregoing deed, and acknowledged the signing and sealing thereof to be his voluntary act and deed for the uses and purposes therein metioned.

In testimony whereof, I have hereunto subscribed my name and affixed my notarial seal on the day and year aforesaid.

[SEAL.] A. G. JOHNSTON,
Notary Public.

Received and recorded July 29th, 1864.
JOHN SHUSS, *Recorder.*

STATE OF OHIO, }
Logan County, } *ss:*

I, John A. Coulter, county recorder in and for Logan county and State of Ohio, do hereby certify that the foregoing writing is a correct copy of a deed from Daniel Gregg to Lucinda M. Leister,

144 as recorded and truly taken from vol. 40, page 464, Logan County Record of Deeds.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Bellefontaine, Ohio, June 2nd, A. D. 1881.

[SEAL.] JOHN A. COULTER,
County Recorder.

Application for Pension.

I hereby certify that the accompanying pages numbered from one to six truly copied from the original in the office of the Commissioner of Pensions.

J. H. BAKER,
Commissioner of Pensions.

Be it remembered, that J. H. Baker, who has signed the foregoing certificate, is Commissioner of Pensions, and that to his attestations full faith and credit are and ought to be due.

In testimony whereof I have hereunto subscribed my name and caused the seal of the Department to be affixed, on this 31st day of March, in year of our Lord one thousand eight hundred and seventy-four.

C. DELANO,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR, PENSION OFFICE,
WASHINGTON, D. C., *March 30th*, 1874.

SIR: Enclosed you will have authenticated copies of the declaration of Archibald Gordon, a Revolutionary soldier, for a pension.

Very respectfully,
J. H. BAKER,
Commissioner.

JEREMIAH HALL, Esq.,
Circleville, Pickaway C., O.

145 Archibald Gordon, a citizen of the United States, and at this time residing in Cecil county, State of Maryland, doth declare that on the 14th day of February, 1777, he marched from Elkton, for three months service under Capt. Thos. F. Henderson, in the second regiment of militia, commanded by Col. Henry Hollingsworth, and on returning at the expiration of said time from the Jerseys, enlisted under Capt. John Dennis in the eleventh Pennsylvania regiment, Col. Patten and Col. Parke, and there remained until Gen. Gates' defeat in South Carolina, and then was taken out of the Pennsylvania by Major John Rudolph and put into Col. Lee's regiment of horse and infantry in Capt. Michael Rudolph's company, under whose command he remained until the end of the war, and was disbanded with the rest of the army in Charlestown, South Carolina, without receiving any discharge, and that from his advanced age he is unable to support himself and family, not having any property or subsistence for support of himself and family but the charity of his country.

Cecil County Court, in the State of Maryland, April term, 1818.

There appeared in open court Archibald Gordon and made oath on the Holy Evangelist of Almighty God that the facts and circumstances stated in the above declaration are true.

Sworn to in open court.

JAMES SEWELL, *Clerk.*

It appears to the satisfaction of Cecil county court that the within named Archibald Gordon served in the Revolutionary war,
146 and the members thereof hereby certify and transmit to the War Department of the United States the testimony laid before them by the said Archibald Gordon in support of his intended application for a pension under the late act of Congress, 9th April, 1818.

R'D T. EARLE.
SAMUEL PURNELL.
THOS. WORRELL.

And that he is in reduced circumstances and stands in need of assistance of his country, and that he continued in the service nine months.

1.

MARYLAND, }
Cecil Coun'y, } *ss:*

I hereby certify that Richard T. Earle, Samuel Purnell, and Thomas Worrell, Esquires, who have given the above certificate, were, at the time of making the same, and still are, the judges of the second judicial district in the State of Maryland, duly commissioned and qualified, and to all whose acts as such due faith and credit is and ought to be given, as will in courts of justice as hereunto.

In testimony whereof, I have hereunto set my hand and affixed the public seal of my office, this sixth day of October, eighteen hundred and eighteen.

[L. S.] JAMES SEWALL,
Clerk of Cecil County Court.

2.

STATE OF MARYLAND, }
Cecil County, } *to wit:*

On this eleventh day of September, 1820, personally ap-
147 peared in open court, being a court of record for the second judicial district of the State of Maryland, proceeding according to the course of the common law, with a jurisdiction unlimited in amount, and keeping a record of its proceedings, Archibald Gordon, aged seventy-five years, resident in Cecil county, in said district, who, being first duly sworn according to law, doth on his oath declare that he served in the Revolutionary war, as follows: That he enlisted in Capt. Miller's company, attached to the eleventh Pennsylvania regiment, commanded by Col. Pattorn, in Philadelphia, in M'ch, 1777; that he was afterwards transferred to the company commanded by Capt. Michael Rudulph, which formed a part of the legion commanded by Gen'l Henry Lee, in which he continued until the termination of the war, when he was discharged at Charleston, in South Carolina; and that he made declaration in conformity to the act of 18th March, 1818, in Cecil county court, on or about the 9th day of April, 1818, and obtained a pension under the said act, his certificate being numbered 3944.

And I do solemnly swear that I was a resident citizen of the United States on the 18th M'ch, 1818, and that I have not since that time, by gift, sale, or in any manner, disposed of my property, or any part thereof, with intent thereby so to diminish it as to bring myself within the provisions of an act of Congress entitled "An act to provide for certain persons engaged in the land and naval service of the United States in the Revolutionary war," passed on the
18th day of March, 1818, and that I have not, nor has any
148 person in trust for me, any property or securities, contracts or debts due to me, nor have I any income other than what is contained in the schedule hereto annexed and by me subscribed.

Sworn to in open court.

JAMES SEWALL, *Clerk.*

Schedule.

One milch cow, two pigs, two beds and bedding, 2 old tables, and a few small articles, the whole not exceeding in value fifty-two dollars; that he is by trade a shoemaker, but by reason of the failure of his eyesight, his age, and infirmities, he is able to work but very little at his trade; that he has a wife, old and infirm, who resides with him, which is all the family he has.

his
ARCHIBALD X GORDON.
mark.

Witness:
JAMES SEWALL.

Sworn to and declared on the eleventh September, 1820, before me, the subscriber, chief judge of the second judicial district of Maryland, composed of Talbot, Queen Anne's, Kent, and Cecil county aforesaid.

RD T. EARLE.

I, James Sewall, clerk of Cecil county cor., do hereby certify that the foregoing oath and the schedule thereto annexed are truly copied from the records of said court, and I do further certify that it is the opinion of the said court that the total amount in value of the property exhibited in the aforesaid schedule is fifty-two dollars.

In testimony whereof, I have hereunto set my hand and
149 affixed the seal of the said court, on this 11th day of September, 1820.

[SEAL.]

JAMES SEWALL,
Clerk of the Court for the County of Cecil.

And afterwards, to wit, on the 17th day of June, A. D. 1881, this cause came on for hearing before Mr. Justice Matthews upon the pleadings and evidence, and was argued by counsel, and was thereupon taken under advisement.

And afterwards, to wit, on the 14th day of July, A. D. 1881, this cause was continued to the next term of this court.

Decree.

And afterwards, to wit, on the 1st day of October, A. D. 1881, being a day of the June term of said court, the following decree was entered in this cause, being in the words and figures, to wit:

LYDIA M. FUSSELL *vs.* DANIEL GREGG *et al.*

The continuance heretofore entered in this cause is set aside, and this day came the parties, and thereupon this cause came on to be heard on the bills, answers, replys, pleadings, and evidence, and was argued by counsel; on consideration whereof, and the court
150 being fully advised in the premises, finds the equity of the case with the defendants; it is therefore considered that the plaintiff's bill be dismissed; that the defendants go hence without

day, and that the complainant, within ten days, pay the costs of this suit, in default of which execution issue against her therefor.

From which decree the complainant prays an appeal to the next term of the Supreme Court of the United States, and the Court finding the value of the real estate in controversy greater than the sum of $2,000.00, exclusive of costs, do allow said appeal, and fix the bond to be executed by the appellant at the sum of $500.00.

150½ *Appeal Bond.*

Know all men by these presents, that we, Lydia M. Fussell, as principal, and Samuel H. Ruggles and A. C. Wilkes, as sureties, are held and firmly bound unto Daniel Gregg, Eleazer P. Kendrick, William Swissgood, Jane Higgins, James Eaton, Granville Smithson, W. G. Smithson, Andrew Murdock, Francis Higgins, John W. Higgins, Angeline Higgins, Matilda Higgins, and Emily Swissgood, in the sum of five hundred dollars, to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this first day of October, in the year of our Lord one thousand eight hundred and eighty-one.

Whereas the above-bounden Lydia M. Fussell has appealed to the next Supreme Court of the United States from a decree of the circuit court of the United States for the northern district of Ohio, bearing date the first day of October, A. D. 1881, in a cause wherein the said Lydia M. Fussell was plaintiff and the said Daniel Gregg *et al.* respondents:

Now, therefore, the condition of this obligation is such, that if the above-named appellant, Lydia M. Fussell, shall prosecute her said appeal with effect, and pay all such damages, costs, and expenses as shall be awarded against her as such appellant therein, then this obligation to be void; otherwise to remain in full force and effect.

150¾

LYDIA M. FUSSELL. [SEAL.]
SAMUEL H. RUGGLES. [SEAL.]
A. C. WILKES. [SEAL.]

Sealed and delivered in presence of—
FELIX R. SULLIVAN,
EDWARD I. CLARK,
JEREMIAH HALL.
J. R. OSBORN,
As to Wilkes.

Endorsed: Approved and filed, October 15th, 1881. M. Welker, judge.

151 *Opinion of the Court.*

Matthews, Circuit Justice:

These suits were argued, and may be decided together. The material facts, as they appear by the pleadings and proofs, so far as material at present, are as follows:

On the 19th day of July, 1822, warrant No. 6508 for 200 acres of land was granted by Virginia to Archibald Gordon, late of Cecil county, Maryland, for service in the Virginia line, on Continental establishment, in the war of the Revolution.

On July 1, 1823, he caused this warrant to be located on entry 12017, in the Virginia military district, in Logan county, Ohio, and the same to be duly recorded.

On March 25, 1823, this location was carried into survey, and on November 5, 1824, this survey was recorded in the office of the principal surveyor of said district, at Chillicothe.

Archibald Gordon died intestate about the year 1829 or 1830, leaving Archibald Gordon, Jr., his only child and heir-at-law.

Archibald Gordon, Jr., died intestate about the year 1833 or 1834, leaving the complainant and her sister, Sarah Priscilla, his only children and heirs-at-law. The complainant was intermarried, on Nov. 1, 1855, and her husband died about August 1st, 1865. Her sister, Sarah P., was married about December 4, 1848, and died leaving Sara Elizabeth her only child and heir-at-law; her
152 husband died about the year 1855; her child, Sarah Elizabeth, died at the age of nine years and six months, leaving complainant her sole heir-at-law.

No patent has ever been applied for or issued on this entry and survey by or to Archibald Gordon, or his legal representatives. According to the testimony of E. P. Kendrick, principal surveyor of the Virginia military district at Chillicothe since 1845, this entry and survey of Archibald Gordon are marked "Withdrawn" on the record, as he supposes, because it was thought that the location was made upon a State line warrant, though he never saw the warrant.

His supposition is based on a note made on the record of Gordon's location of the words "State line;" but by whom this note and the word "Withdrawn" were written, and at what time, he does not know. A certified copy or duplicate of warrant No. 6508, the original being dated July 19th, 1822, to Archibald Gordon, certified by the register of the Virginia land office, at Richmond, Virginia, shows that it was issued in consideration of services as a private in the Continental line.

On May 25, 1840, Cadwallader Wallace made an entry in his own name of 50 acres of land in said district, and caused the same to be recorded on military warrant No. 6713, described so that the *west* line of the Gordon survey No. 12017 should be the east line of Wallace's entry No. 14530.

On the next day, May 26, 1840, Wallace caused a survey of this entry to be recorded, and from the survey it appears that his
153 50 acres were laid off and described, so that the whole of it lies within the limits of the Gordon survey; the west line of the latter being also the west line of the Wallace survey, instead of the east line, as called for by the entry. And on April 8th, 1842, Wallace obtained a patent from the United States for the land described by and embraced within this survey.

On October 4, 1851, Daniel Gregg made an entry in the records of the principal surveyor of said district, No. 16070, of 130 acres on

military warrant No. 142 to include the vacant lands between surveys 9993, 9997, 9994, 9958, and 14530, the last named being Wallace's 50-acre survey, as above described.

On December 20, 1851, Gregg procured 100 acres of his entry to be surveyed so as to cover that much of the land within the entry and survey No. 12017 of Archibald Gordon lying next east to Wallace's 50-acre survey.

Cadwallader Wallace, by a previous entry and survey, recorded November 5, 1834, became the proprietor of 150 acres of land, the title to which is not in dispute, described in the survey so that its *east* line coincided its full length for that distance with the *west* line of Archibald Gordon's survey No. 12017, to its northwest corner; Gordon's west line for 240 poles from a stake to the northwest corner of his survey, being one of the calls in this survey of Wallace.

Of the 50 acres described in Wallace's survey No. 14530, 21 acres off the northern part are claimed by the defendant Hughes, and 29 acres remaining by the defendant Esther Dennison, who are
154 joined in the first bill, who derive title from Wallace, and are in possession. The 100 acres patented to Gregg, and conveyed by him to Swissgood and others, are covered by the second bill, to which they are made defendants.

Kendrick, the principal surveyor of the military district, is made a defendant to both bills.

The complainant claims that she is, by virtue of the entry and survey of her ancestor, Archibald Gordon, now seized in fee-simple of an equitable estate in the land embraced therein, and entitled to the immediate possession thereof; that the entry and survey of Cadwallader Wallace No. 14530, and his patent issued thereon, and the entry of said Gregg, and his survey and patent, were all of them made and obtained in violation of the proviso of the second section of the act entitled "An act to extend the time for locating Virginia military land warrants and returning surveys thereon to the General Land Office," approved March 1, 1823, and are all of them void.

The relief prayed for is that the location, entry, and survey No. 12017, in the name of her ancestor, Archibald Gordon, founded on said military warrant No. 6508, be established and affirmed, and the validity thereof forever perpetuated; that the location of said Cadwallader Wallace, his entry, survey No. 14530, and patent, and the location of Daniel Gregg, his entry and survey No. 16070 and patent, be adjudged to have been made and issued in violation of the proviso of said act of Congress, and void; that the words "Withdrawn" and "State line," so written upon said records, location, entry, and survey No. 12017, be adjudged to have been so written without authority, and that the evidence of said military warrant No. 6508 and original survey of said entry No. 12017 be forever perpetuated; that the complainant may have an order for the delivery of the possession of said premises to her, for an account of rents and profits, and for general relief.

The act of March 1, 1823, referred to in the pleadings, after providing, in the first section, that the officers and soldiers of the Virginia line on Continental establishment, their heirs and assigns, who

are entitled to bounty lands within the country reserved by the State of Virginia between the Little Miami and Scioto rivers, shall be allowed a further time of two years from the fourth day of January, 1823, to obtain warrants and complete their locations, and the further time of four years from the same period to return their surveys and warrants to the General Land Office to obtain patents, contains in the second section a proviso in the following words: "Provided, that no locations as aforesaid, in virtue of this or the preceding section of this act, shall be made on tracts of land for which patents had previously been issued, or which had been previously surveyed, and any patent which may, nevertheless, be obtained for land located contrary to the provisions of this act shall be null and void." 3 St. at Large, 772.

156 The right of the complainant to the relief sought is contested on several grounds, which remain to be stated and considered in their order:

1. The defendants, in the first place, deny the heirship of the complainant, and claim that at least there is a failure of proof upon that point. Without critically examining and analyzing the evidence upon the question, it is sufficient to say that there seems to be enough competent testimony in support of the complainant's claim to justify a finding in her favor.

2. The next ground of objection is more serious and difficult of satisfactory determination. It appears from the testimony that Archibald Gordon, Jr., son of the Revolutionary soldier, was married in 1827 to Sarah E. Hart, daughter of Joseph Hart, and sister of Stephen F. Hart. There is also produced in evidence on the part of the defendants a copy, certified by the recorder of Logan county, in which these lands are situate, of a deed duly executed, and dated June 27th, 1827, between Archibald Gordon, described therein as late of Cecil county, Maryland, and Stephen F. Hart, of the county of Baltimore, whereby, in consideration of $100 paid by Joseph Hart, Archibald Gordon grants, bargains, and sells to Stephen F. Hart, in fee-simple, all his lands in Ohio, Indiana, and Illinois, describing, amongst others, one tract in Ohio, surveyed on military warrant No. 6508 and on entry No. 12017, and setting out an accurate copy of the description contained in the survey. This deed pur-

157 ports to have been signed and sealed by Archibald Gordon, and is acknowledged by him in the city of Baltimore before two justices of the peace, duly certified to have been such at the time by the clerk of the superior court of that city.

It is contended by the defendants that it is effectually shown by this deed that no estate or interest in the lands in controversy ever vested in the complainant, whether it be regarded as the deed of Archibald Gordon, Sr., or of his son; even on the latter supposition, if it were made during the lifetime of his father; that Archibald Gordon, Sr., was living at the time of its date is clearly shown by proof that he was in receipt of a pension as late as in September of the year 1829. In the absence of any proof on the subject, and if it were necessary to the decision of the case, it seems to me that the presumption naturally arising upon the circumstances of the case

require that it should be held to be the deed of Archibald Gordon, Sr. On the supposition that it was the deed of his son, and made in the lifetime of the father, the same presumption would justify a finding in its support of a previous conveyance from the father to the son. And the recital contained in it, that the lands conveyed are "*his* lands," even in the absence of a covenant of general warranty, would seem to be sufficient to prevent by estoppel the complainant as the grantor's heir at law, deriving title through him, from now claiming an estate in derogation of that deed. But the contrary was held by the supreme court of Ohio in the case
158 of Hart *v.* Gregg, 32 Ohio St., 502, which was a suit brought by the heirs of Hart, the grantee in this very deed, against some of the present defendants for the purpose of recovering a part of the lands in controversy in this suit. It would be anomalous if the defendants in that suit, having succeeded in protecting themselves against the claim of Hart's heirs, on the ground that the deed to their ancestors passed no title, should now be permitted to defend themselves against Gordon's heirs on the ground that it passed all her ancestors' title to Hart. In the view I feel compelled to take of the rights of the parties upon other grounds, the determination of the question as to the effect of this deed becomes immaterial.

3. It is evident that the foundation of the complainant's case is in the proposition plainly affirmed in the bills that she is now seized in fee-simple of the equitable estate in said location of land, and entitled to the immediate possession. This proposition is negatived by the defendants, and this is the main contention of the parties. To decide it requires a review of the legislation on the subject, as the question turns on the meaning and application of the acts of Congress which relate to it. On March 23, 1804, Congress passed an act entitled "An act to ascertain the boundary of the lands reserved by the State of Virginia, northwest of the river Ohio, for the satisfaction of her officers and soldiers on Continental establishment, and to limit the period for locating the said lands."

The section section provides—

"That the officers and soldiers, or their legal representa-
159 tives, who are entitled to bounty lands within the abovementioned reserved ter-itory, shall complete their locations within three years after the passing of this act; and every such officer and soldier, or his legal representatives, whose bounty land has or shall have been located within that part of the said territory to which the Indian title has been extinguished, shall make return of his or their surveys to the Secretary of the Department of War within five years after the passing of this act, and shall also exhibit and file with the said Secretary, and within the same time, the original warrant or warrants under which he claims, or a certified copy thereof, under the seal of the office where the said warrants are legally kept, which warrant, or certified copy thereof, shall be sufficient evidence that the grantee therein named, or the person under whom such grantee claims, was originally entitled to such bounty land; and every person entitled to said lands, and *thus applying*,

shall thereupon be entitled to receive a patent in the manner prescribed by law."

The third section is as follows:

"That such part of the above-mentioned reserved territory as shall not have been located, and those tracts of land within that part of the said territory to which the Indian title has been extinguished, the surveys whereof shall not have been returned to the Secretary of War within the time and times prescribed by this act, shall thenceforth be released from any claim or claims for such bounty lands, and shall be disposed of in conformity with the provisions of the act entitled An act in addition to, and modification of, the provisions contained in the act entitled An act to enable the people
160 of the eastern division of the territory northwest of the river Ohio to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes."

It will be observed that the effect of this act was to declare that a completed location within three years, and a survey and return thereof, with the original or certified copy of the warrant on which they were founded, to the General Land Office, within five years from the passage of the act, were made by it conditions precedent, without compliance with which, no one entitled to bounty land in this district could obtain a patent; and that by a distinct, substantive, and positive provision of the same act, all lands in the reserved territory not thus effectually appropriated within these prescribed terms should thenceforth cease to constitute a part of the released territory of the Virginia military land district, should be cleared from all claims for such bounty lands by virtue of any location or survey not thus completed and returned, and should become thereby the property of the United States, to be disposed of as part of its public lands, free from any trust in favor of the soldiers of Virginia on the Continental establishment, to be otherwise disposed of in accordance with the statute referred to.

This construction and effect were given to this legislation by the Supreme Court in the case of Jackson *vs.* Clark, 1 Peters, 628,
161 in which, on that account, counsel denied the power of Congress to enact it. In vindicating the limitation as a lawful exercise of power on the part of Congress, Chief Justice Marshall pointed out that the reservation by Virginia in her act of cession was not a reservation of the whole tract of country between the rivers Scioto and Little Miami for the exclusive benefit of her soldiers who served in the Continental establishment, but of only so much of it as might be necessary to make good any deficiency that might exist of good lands set apart for them on the southeast side of the Ohio river. The residue of the lands were ceded to the United States for the benefit of the said States—

"To be considered as a common fund for the use and benefit of such of the United States as have become or shall become members of the Confederation or Federal alliance of the said States, Virginia inclusive, according to their usual respective proportions in the general charge and expenditure, and shall be faithfully and *bona*

fide disposed of for that purpose, and for no other use or purpose whatever."

The Chief Justice then adds:

"Although, then, the military rights constituted the primary claim on the trust, that claim was, according to the intention of the parties, so to be satisfied as still to keep in view that other object which was also of vital interest. This was to be effected only by prescribing the time within which the land to be appropriated by these claimants should be separated from the general mass so as to enable the Government to apply the residue, which it was then supposed
162 would be considerable, to the other purposes of the trust. The time ought certainly to be liberal, but unless some time might be prescribed the other purposes of the trust would be totally defeated and the surplus land remain a wilderness."

Indeed, it is upon the basis of this right in Congress, and its effect, that the Chief Justice, in that case, establishes the right in Congress to make the provision in respect to new locations, the violation of which it is claimed by the complainant in this case, on the part of Wallace and Gregg, renders void their patents. In commenting on that provision as contained in the act of March 2nd, 1807, in which it first appeared, and from which it was taken in the several successive acts in which it is found, the Chief Justice said:

"If the right existed to prescribe a time within which military warrants should be located, the right to annex conditions to its extension follows as a necessary consequence. The condition annexed by Congress has been calculated for the sole purpose of preserving the peace and quiet of the inhabitants by securing titles previously acquired."

The act of 1801 was followed by that of March 2, 1807, which provided that the officers and soldiers of the Virginia line on Continental establishment, entitled to bounty lands, etc., "shall be allowed a further time of three years, from the 23rd of March next, to complete their locations, and a further time of five years, from the said 23rd of March next, to return their surveys and warrants, or certified copies of warrants, to the office of Secretary of the War Department."

It also contains this proviso:

163 "Provided, that no locations as aforesaid within the above mentioned tract shall, after the passing of this act, be made on tracts of land for which patents had previously been issued, or which had previously been surveyed; and any patent which may, nevertheless, be obtained for land located contrary to the provisions of this section, shall be considered null and void."

Successive acts were passed from time to time extending the time for making locations, and making and returning surveys—April 11, 1818, (3 St. at Large, 423); February 9, 1821, (3 St. at Large, 612); March 1, 1823, (3 St. at Large, 772); May 20, 1826, (4 St. at Large, 189)—each of which retains and repeats the proviso first contained

in the act of March 2, 1807. The act of May 20, 1826, extended the time for making locations to June 1, 1829, for making surveys to June 1, 1832, and for returning surveys to June 1, 1833. After these times thus limited had expired, there was no existing authority for making locations, surveys, and returns for five years, when the act of July 7, 1838, was passed, which renewed the authority until August 10, 1840, and provided in respect to the past that—

"All entries and surveys which may have heretofore been made with the said reservation, in satisfaction of any such warrants on lands not previously entered or surveyed, or on lands not prohibited from entry and survey, shall be held good and valid: *any omission heretofore to extend the time for the making of locations and surveys to the contrary notwithstanding.*

This act of July 7, 1838, was revived and continued in force
164 by the act of August 19, 1841, (5 St. at Large, 449), until January 1, 1844; by the act of 1846, (9 St. at Large, 41), until January 1, 1848; by the act of July 5, 1848, (9 St. at Large, 245), until January 1, 1850; by the act of February 20, 1850 (9, St. at Large, 420), until January 1, 1852.

This is all the legislation on the subject except two subsequent statutes, which remain now to be noted. The first of these is an act passed March 3, 1855, (10 St. at Large, 701), entitled "An act allowing the further time of two years to those holding lands *by entries* in Virginia military district of Ohio, which were made prior to the first of January, 1852, to have the same surveyed and patented." It provides that bounty lands, which have been entered within the tract reserved by Virginia, between the Little Miami and Sciota rivers, for satisfying the legal bounties to her officers and soldiers upon Continental establishment, shall be allowed the further time of two years from and after the passage of the act to *make and return their surveys* and warrants, or certified copies of warrants, to the General Land Office. The second is the act of May 27, 1880, the second section of which enacts that "all legal surveys returned to the land office, on or before March 3, 1857, or entries made, *on or before January* 1, 1852, and founded on unsatisfied Virginia military Continen-al warrants, are hereby declared valid."

The third section of the act of March 23, 1804—the first of this series of statutes—was not repeated in any subsequent law; but it was not repealed or modified, and although it verbally refers
165 to the limitation of that particular act as making the release therein declared, it is not to be considered as having become inoperative by the expiration of the times limited in the act. On the contrary, all the subsequent statutes extending the period of time for making valid entries, surveys, and returns of surveys, so as to entitle the party to a patent, are to be taken as reviving the entire law, including the third section, as if the latter had been incorporated with each new enactment, for the whole series is necessarily connected by the identity of its subject-matter, and must be taken and construed as though there was but one statute, so that the consequences of a failure to take the steps required to procure a patent

within the periods from time to time limited, prescribed in the third section of the act of 1804, must be understood as following and applying to each successive extension of the time of grace.

This conclusion is strengthened by the language used in the act of July, 1838, confirming entries and surveys made in the interim between June 1, 1832, and the passage of that act, during which, as has been shown, the limitation which barred them had become complete. That language is that such entries and surveys "shall be held good and valid, any omission heretofore to extend the time for the making of such entries and surveys to the contrary notwithstanding." Such language would not have been thought necessary except upon the theory that, without it, all such entries and surveys would have been void. So, too, it is manifest by the act
166 of March 3, 1855, and of May 27, 1880, which extends the time of making and returning surveys until March 3, 1857, but on entries only that had been made prior to January 1, 1852, that since the last mentioned date all entries and surveys made prior thereto are vacated, annulled, and made void, so that they cannot lawfully serve as a basis of patents, the land covered by them lapsing into the general body of public lands of the United States, to be disposed of according to the laws in force in respect thereto, and no longer constituting any portion of the Virginia military reservation of bounty lands. That conclusion, adopted and applied to the present case, is fatal to the complainant's claim, as it takes away from her all foundation for the equity which she asserts. The Gordon entry No. 12017 was located and surveyed previous *of* January 1, 1852, and no return thereof with the warrant, or any certified copy thereof, has ever been made to the General Land Office. It has therefore lapsed and no longer subsists. This conclusion cannot be resisted on the ground that by the entry and survey, when originally made, Archibald Gordon became vested with an equitable estate, which Congress cannot deprive him of by legislation, for the obvious reason that Gordon's rights were not vested *absolutely*, but only subject to the conditions prescribed by the statutes under which alone his rights arose; and, having failed to comply with and perform the conditions prescribed as essential to perfect his estate and title, his inchoate rights have never ripened into an indefeasible title.

Neither is there any equity raised by the complainant
167 on the ground of any alleged fraud by which she or her ancestor was prevented from taking the necessary steps to complete their title by obtaining a patent, and so protecting their interests forever, on the supposition that there was fraud and collusion between Kendrick and Wallace and Gregg, by which Kendrick was induced to write the word "Withdrawn" upon the record of the Gordon entry and survey. There is no ground on which that fraud can be imputed to the defendants in possession, who appear to have been innocent purchasers of the title of Wallace and Gregg, without notice of any such claim.

Even if it should be held that the patents of Wallace and Gregg were void, in contravention of the proviso to the act of March, 1823, annulling patents granted for lands which had been previously sur-

veyed for another, still it could not better the position of the complainant by investing her with a legal title held by the United States for its own use, or reinstating an equity which had lapsed by operation of positive law, or estopping the defendants from insisting that she is not entitled to recover from them their possession without proof of a paramount title. As to the good faith and innocence of wrong on the part of the defendants in possession, it may be noticed that the counsel for the complainant, in his written argument, states that Wallace's ingenuity in covering up the location of Gordon, and in his deed in the sale of it, ostensibly professing to locate and sell land west of Gordon's land, and Gregg engrafting his survey upon Wallace's, made it so that no one could, by
168 an examination of the record, determine that either it or Wallace's survey covered Gordon's land.

This exonerates the defendants in possession from any charge of fraud and collusion, but does not excuse the laches of the complainant, because no confusion could have the effect of misleading her as to her right, if she had any, to obtain a patent upon her grandfather's entry and survey, more especially as her counsel also insist that Kendrick could not have written the word "Withdrawn" on the record of that survey until "long since 1850." As her right to apply for a patent expired by statutory limitation on January 1, 1852, it does not appear that she was prevented from an earlier application by the conduct of which she complained.

4. There is another and equally insuperable objection to the bills in these cases which prevents any decree in favor of the complainant for the relief prayed for even on the theory and statements of the bills themselves. The complainant claims only an equitable estate, and yet prays for the recovery of possession of the lands against defendants in possession, as to whom she alleges they have no title either at law or in equity. She does not admit that the patents under which they claim have vested them with the legal title, but under such circumstances as to entitle her in equity to call for a conveyance and relief. If she did it would be an ordinary case for exercise of jurisdiction by a court of chancery. But she asserts no equity against the defendants in possession except that they are in possession, without title, of land which in equity
169 belongs to her, the legal title to which is in the United States. Under such circumstances her only remedy is, if she is entitled to do so, to clothe her equity with the legal title by an application under the law to the public officers of the United States charged with the duty of issuing patents to those entitled, and then proceed at law to recover possession. But she does not expect or ask for a decree of this Court clothing her with the legal title, nor pray for a conveyance from the defendants of what they claim to have. It would be useless to declare the Wallace and Gregg patents void, because that would be no ground for further relief to the complainant, and if they are void they do not prevent the assertion of any legal rights she may have; and this Court has no jurisdiction over the principal surveyor, Kendrick, in the discharge of his official

duties, and no right to control the public records lawfully in his custody, and for whose contents he is officially responsible.

On the whole the case fails on its face for want of equity, and is clearly within the authority of the case of Galt *vs.* Galloway, 4 Pet., 332.

5. But there is another substantial and satisfactory ground concurring with those already discussed, on which the bills must be dismissed. If the complainant ever had the right of action now asserted it is barred by lapse of time.

In Miller *v.* McIntyre, 6 Peters, 61, it was decided, following Elmendorf *v.* Taylor, 10 Wheat., 168, that in equity, as well as at law, a statute of limitations is a bar when the conflicting titles are adverse in their origin, and one was equitable and the other
170 legal. Mr. Justice McLean concluding his opinion, and speaking for the Court, said:

"From the above authorities it appears the rule is well settled, both in England and in this country, that effect will be given to the statute of limitations in equity the same as at law; and as in this case there could be no doubt, if the complainant's ancestor had held by grant at the time the adverse possession was taken, that the statute would have barred the right of entry, the same effect must be given to it in equity."

In the present case certainly the complainant cannot ask to be placed in any better position than she would have been in if, at the time possession was taken under the Wallace and Gregg —, she had received, as heir at law of Archibald Gordon, a patent for the land covered by his entry and survey. On that supposition, what would have been her rights at the time she began the present suits? Wallace obtained his patent for 50 acres on survey No. 14530 on April 8th, 1842, being at that time the owner by patent of 150 acres adjoining on the west.

In 1844 he conveyed by one deed the whole of both tracts, but as an entirety, to Sutton, who entered into possession soon after, which possession, in him and his successors by deed, I find to have been continuous, uninterrupted, open, notorious, and adverse from that time.

The Gregg patent was issued November 20th, 1855, and possession taken under it in 1856.

It is admitted by counsel for complainant that, as to 21 acres at the north end of the Gordon survey, there has been an adverse occupancy under the Wallace title for more than 30 years; but the adverse possession for more than 12 or 15 years is denied as
171 to the residue, being the 29 acres at the south end of survey No. 14530.

This denial rests upon the ground that the deed, under which Esther Dennison, and those under whom she claimed, claims to have title, embraced other lands in survey No. 13593 not in dispute, and on which the actual improvement took place; that now in controversy being left in woods, uncleared and unimproved. But this distinction cannot be supported. In Clark *v.* Potter, 32 Ohio St., 49, it

was decided that "one who enters upon land under color of title intending to take possession of the entire tract, no part of which is held adversely at the time of his entry, is deemed to be in possession to the extent of his claim." These bills were filed November 2, 1879. The cause of action, as to the land covered by the Gregg patent, accrued, as we find from the evidence, when possession was taken in 1856. It would have been barred in 1877, if complainant was under no disability. By the terms of the Ohio statute of limitations "an action for the recovery of the title or possession of lands, tenements, or hereditaments can only be brought within 21 years after the cause of action shall have accrued." Rev. St., § 4977.

"If a person entitled to commence such action is, at the time his right or title first descends or accrues, within the age of 21 years, a married woman, insane or imprisoned, such person may, after the expiration of 21 years from the time his right or title first descended or accrued, bring such action within 10 years after such disability is removed, and at no time thereafter." Section 4978.

172 It will be perceived, from a careful reading of these provisions of the law, that the action must be brought within 10 years after the disability is removed, unless in cases where that period would terminate less than 21 years from the time the cause of action accrued. The party is entitled to twenty-one years at least, and as much more in case of being under disability, when the statute would otherwise begin to run, as would be necessary to make 10 years from the removal of the disability.

In these cases the complainant was a married woman in 1856, when her cause of action accrued, if at all, as against those claiming under the Gregg patent. This disability was removed in 1865; ten years after, the removal of her disability expired, in 1875; twenty-one years after, the causes of action accrued expired, in 1877; the suit was not brought within either period, and is, therefore, barred.

As to the defendants under the Wallace patent, when they took possession in 1844, the complainant was 15½ years old, and her sister 11. The disability was removed, and the bar complete long before the institution of these suits. On these several grounds the bill must be dismissed for want of equity.

The question raised in respect to the defendants' title are immaterial and have not been noticed; for, unless the complainant is entitled to relief on the ground of some equity of her own, the want of title on the part of the defendants will not supply it.

They have a right to rest on their possession alone until some superior claim is established.

173 *Certificate.*

UNITED STATES OF AMERICA,
Northern District of Ohio, Western Division, } ss:

I, Augustus J. Ricks, clerk of the circuit court of the United States, for said division and district, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in the cause wherein Lydia

M. Fussell is the complainant, and Daniel Gregg, Eleazer P. Kendrick, William Swissgood, Emily Swissgood, Francis Higgins, John W. Higgins, Angelina Higgins, and Matilda Higgins, children of Jane Higgins, deceased, James Eaton, Granville Smithson, and Andrew Murdock are the defendants, as the same appears from the files and records of said court, now remaining in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Toledo, in said district, this 26th day of October, A. D. 1881, and in the 106th year of the Independence of the United States of America.

[SEAL.] AUGUSTUS J. RICKS,
Clerk.

[Endorsed on cover:] N. Ohio, C. C. U. S. No. 147. Lydia M. Fussell, appellant, *vs.* Daniel Gregg *et al.* Filed, 4th November, 1881.